

## DEPARTMENT OF THE ARMY PERMIT

Permittee: City of Newport News, 2400 Washington Avenue, Newport News, VA  
23607 (757) 926-8000

Permit No.: 93-0902-12 (Norfolk District)

Issuing Office: North Atlantic Division, Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

### Project Description:

Perform construction activities and discharge fill material into navigable and non-navigable waters of the United States in conjunction with construction of the King William IV Reservoir, associated water conveyance pipelines and a raw water intake, and streams and wetlands mitigation work required by this permit.

Dredge a maximum of 2,500 cubic yards of material from an approximate 25 foot by 200 foot area of the Mattaponi River to facilitate installation of the raw water intake and associated bedding of riprap over crushed stone and concrete, and install a temporary sheetpile enclosure around the area authorized herein to be dredged and filled. Install two 60-inch diameter raw water intake lines and a 60-inch diameter air piping casing line. Discharge clean fill material into approximately 6.1 acres of freshwater wetlands to facilitate construction of an earthen dam impounding Cohoke Creek. Temporarily impact approximately six acres of wetlands and one acre of streams to facilitate installation of a total of 11.7 miles of water conveyance pipelines. Install a 48-inch diameter pipeline by directional drilling under Cohoke Creek and a 42-inch diameter pipeline by directional drilling under the Pamunkey River and the adjacent Cousiac Marsh. Construct an outfall structure with an associated 33 foot by 150 foot excavated trapezoidal channel/level spreader to consist of riprap atop bedding stone and filter cloth, adjacent to Beaverdam Creek. Perform stream restoration/enhancement work and wetland restoration/creation work as conceptually described in a document titled "King William Reservoir Project Reservoir Mitigation Plan", prepared by Malcolm Pirnie, dated June 2004, and the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic Properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", dated June 21, 2005.

All work shall be performed in accordance with the attached drawings, General Conditions, and Special Conditions (A) through (S) which are hereby made part of this permit.

Project Location: IN: Mattaponi River, Cohoke Creek (a/k/a Cohoke Mill Creek), Pamunkey River, Beaverdam Creek, and various tributaries of the Pamunkey, Mattaponi, Rappahannock and York Rivers

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AT: various locations in Essex, Hanover, Louisa, New Kent and King William Counties, Virginia or other counties in the York or Rappahannock River basins

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on July 1, 2020. If you find that you need more time to complete the authorized activity, submit your request for a time extension to the local district office for consideration at least three months before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must comply with the provisions of the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", dated June 21, 2005 (see Special Condition (R)).
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to the local district office to validate the transfer of this authorization.
5. As a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from the local district office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

(A) Within 20 days of the completion of intake installation work in the Mattaponi River, the permittee shall remove all temporary sheetpiling and restore pre-construction river bottom contours at the work site and dispose of any excess dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

(B) Within 20 days of the completion of pipeline installation work not involving directional drilling, the permittee shall remove all temporary fills and restore pre-construction stream and wetland substrate contours at each work site and dispose of any excess excavated/dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

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(C) The permittee shall be responsible for the successful execution of the Wetland, Stream and Riparian Corridor, and Fish and Wildlife Habitat Mitigation Components of the permittee's proffered mitigation proposal conceptually described in a report titled "King William Reservoir Project Reservoir Mitigation Plan", prepared by Malcolm Pirnie, dated June 2004, as specified in the following conditions (D) through (I). The mitigation construction work (grading, planting, etc.) shall be completed to the written satisfaction of the U.S. Army Corps of Engineers prior to the permittee's commencement of raw water withdrawals from the Mattaponi River.

(D) The permittee shall be responsible for the successful restoration and/or creation of 806 acres of freshwater wetland complexes consistent with the above-referenced June 2004 plan. Any deviations from the June 2004 proffered wetland mitigation proposal would have to be approved in advance in writing by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. The Final Detailed Mitigation Plan should prioritize utilization of wetland mitigation sites in the York River watershed to the maximum extent practicable.

(E) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed wetlands mitigation plan, for review and written comments by the Interagency Mitigation Team, and approved by the Corps prior to construction. The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein, or disturbance of any wetland mitigation site, until the final detailed wetlands mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (F) below include the following items at a minimum:

- a) grading and planting plans for each wetland restoration/creation site, to include an appropriate mix of native species, and target success criteria;
- b) erosion control measure installation and removal plans for each wetland restoration/creation site;
- c) preservation plans for each wetland restoration/creation site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
- d) financial assurances for the successful completion of the minimum required wetland restoration/creation work; and
- e) plans for control of invasive species at the wetland restoration/creation sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

(F) The permittee shall monitor each wetland mitigation site over a 20-year period beginning with completion of the first growing season for each wetland creation/restoration site upon which grading has occurred. The permittee shall be required to monitor each site for a maximum of nine (9) times within the 20-year period in accordance with the above-referenced June 2004 plan. Timing of monitoring report preparation and submittal will be determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The U.S. Army Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

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(G) The permittee shall be responsible for the successful restoration, enhancement and preservation of Corps of Engineers' regulated stream and riparian corridors to offset the approximately 21 linear miles impacted within the reservoir area, consistent with the mitigation credit ratios proffered for stream restoration, enhancement and preservation in the above-referenced June 2004 plan. The U.S. Army Corps of Engineers may authorize the use of stream credits from approved mitigation banks or other stream segments not identified in the above-referenced plan to complete the stream mitigation requirements. Any deviations from the June 2004 proffered stream mitigation proposal must be approved in advance in writing by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. The Final Detailed Mitigation Plan should prioritize utilization of stream mitigation sites in the York River watershed to the maximum extent practicable. The permittee will coordinate with the U.S. Army Corps of Engineers to determine appropriate stream mitigation credit for fish passageway mitigation requirements listed in the Virginia Department of Environmental Quality Water Protection Permit/Water Quality Certificate referenced below.

(H) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed streams mitigation plan, for review and written approval by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein until the final detailed streams mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (I) below and include the following items at a minimum:

- a) detailed design and planting plans for each stream restoration/enhancement site, to include an appropriate mix of native species, and target success criteria;
- b) erosion control measure installation and removal plans for each stream restoration/enhancement site;
- c) preservation plans for each stream restoration/enhancement site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
- d) financial assurances for the successful completion of the minimum required stream restoration/enhancement work; and
- e) plans for control of invasive species at the stream restoration/enhancement sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

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(I) The permittee shall monitor each stream restoration/enhancement site for a five-year period, beginning with completion of the first growing season for each stream restoration/enhancement site upon which construction and/or initial planting has occurred in accordance with the above-referenced June 2004 plan. The permittee shall provide monitoring reports at a frequency and timing to be determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

(J) Within 180 days of the date of issuance of this permit, and in accordance with the small whorled pogonia plant Conservation Recommendation of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall commence negotiations with the landowner of property identified as New Town Section 8, Parcel ID 38410156, the location of a colony of small whorled pogonia (*Isotria medeoloides*) in James City County, Virginia with the intent of reaching agreement for purchase of a conservation easement area to protect the small whorled pogonia colony. If agreement cannot be reached for a conservation easement on the above referenced property within 180 days of the commencement of negotiations as described above, the permittee shall immediately commence negotiations with the landowner of a private property identified as Parcels 39-1C, 39-208 & 39-201 in Gloucester County, Virginia to preserve an existing small whorled pogonia colony and eight acres of surrounding buffer. The permittee shall submit any proposed easement language for the site to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps before any easement is recorded. The permittee shall pursue and implement an easement on an alternate site location, designated by the U.S. Fish & Wildlife Service and Commonwealth of Virginia Natural Heritage if the primary sites are unavailable.

(K) Within one year of the date of issuance of this permit, the permittee shall submit a draft monitoring plan for the Mattaponi River to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps. Said plan shall include provisions for controlling of initial filling of the King William IV Reservoir as a research opportunity, in accordance with sensitive joint-vetch plant Conservation Recommendation B) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion.

(L) The permittee shall monitor, for a ten-year period, all extant and appropriate historic sensitive joint-vetch sites on the Mattaponi and Pamunkey Rivers in accordance with sensitive joint-vetch Conservation Recommendation C) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion. The specific monitoring period will be determined by the U.S. Army Corps of Engineers in consultation with the U.S. Fish & Wildlife Service.

(M) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive joint-vetch Conservation Recommendation D) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps before any easement is recorded, a written plan for strict control of invasive species at the Mattaponi River intake site at Scotland Landing, Virginia. The permittee shall immediately notify the U.S. Army Corps of Engineers if the execution of said plan would result in an additional discharge of dredged or fill material into jurisdictional waters of the United States.

(N) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive

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joint-vetch Conservation Recommendation E) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps, a plan for installation of an appropriate series of buoys and/or markers in the Mattaponi River in the vicinity of the intake site. The plan shall prescribe means for protection of the intake structure from potential damage by passing vessels, and for minimization of boat wake impacts to sensitive joint-vetch plant habitat at Garnetts Creek Marsh. The permittee shall also submit all necessary permit applications to secure any necessary federal (Non-U.S. Army Corps of Engineers), state and/or local approvals to perform such work.

(O) Within 180 days of the date of issuance of this permit, and in accordance with the sensitive joint-vetch plant Conservation Recommendation F) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall commence negotiations with the landowner(s) of properties containing the Garnetts Creek Marsh and Gum Marsh, plus upland buffer areas, with the intent of reaching agreement for land acquisition or purchase of a conservation easement area to protect the sensitive joint-vetch populations. The permittee shall submit a suitable protection plan, including configuration of upland buffers, plus any proposed easement language for the site to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps before any easement is recorded. The permittee shall consult with the U.S. Army Corps of Engineers in the event of negotiation failure.

(P) Should bio-fouling mollusks, such as the zebra mussel, become present in the York River, the permittee shall submit to the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service, Chesapeake Bay Field Office, for approval an Operational Plan for installation and operation of a chemical feed system that can apply chemicals within the intake pipe on the river side of raw water pump discharge check valves. The Operational Plan shall detail the proposed chemicals or other measures to be utilized to protect its intake structures from such species, and shall be accompanied by a technical assessment of the potential impact on river habitat and fisheries resources, including a specific assessment for listed species, resulting from activation of the proposed measures. The permittee shall not install or operate this chemical feed system until the U.S. Army Corps of Engineers has notified them in writing that the requirements of Section 7 of the Endangered Species Act of 1973, as amended (Title 16, U.S. Code § 1531 et. seq.) have been satisfied and that permission is granted to install and activate the chemical feed system.

(Q) The special conditions contained in the Commonwealth of Virginia issued Water Quality Protection Permit/Section 401 of the Clean Water Act Water Quality Certificate numbered 93-0902, dated December 22, 1997, last modified January 14, 2000, and with an expiration date of December 22, 2007, are incorporated herein as conditions of this Department of the Army permit in accordance with Section 401(d) of the Clean Water Act. If the Commonwealth of Virginia changes Special Conditions A-9, A-10, B-4 and B-5, by modification or issuance of a new permit/certificate, they will not become conditions of this Department of the Army permit until the Corps formally modifies it. The existing Special Conditions shall remain in effect until such Department of the Army permit modification occurs, as appropriate.

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R) The permittee shall comply with all stipulations and requirements of the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic Properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", a copy of which is attached to this permit. To facilitate such compliance, the permittee shall regularly consult with a Cultural Resources Programmatic Agreement Implementation Team to include the U.S. Army Corps of Engineers, the Advisory Council on Historic Preservation, and the Commonwealth of Virginia Department of Historic Resources with optional participation by representatives of the Mattaponi, Upper Mattaponi, and Pamunkey Native American Tribes.

(S) In addition to the financial requirements set forth in the Memorandum of Agreement referenced in Special Condition (R) above, and in accordance with Title 33 of the Code of Federal Regulations, § 326.4 (c) plus the authority in Section 9701 of Public Law 97-258 (Title 31, U.S. Code § 9701), the permittee shall hire a third-party contractor (or contractors) approved by and answerable to the U.S. Army Corps of Engineers. The permittee shall pay for the costs of field work of said contractor(s) in support of permit compliance and enforcement efforts for this permit to include, at a minimum, field-checking and reviewing the final detailed wetlands and streams mitigation plan and cultural resource treatment plans, and inspecting the project site, mitigation sites and cultural resource sites. Said contractor(s) shall advise the Corps as to the permittee's compliance or non-compliance with the terms and conditions of the permit, including those pertaining to wetlands and streams mitigation and compliance with the cultural resources Programmatic Agreement.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

(X) Section 404 of the Clean Water Act (33 U.S. Code 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

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c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which the division office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by the district office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE)

City of Newport News

\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
(DIVISION ENGINEER)

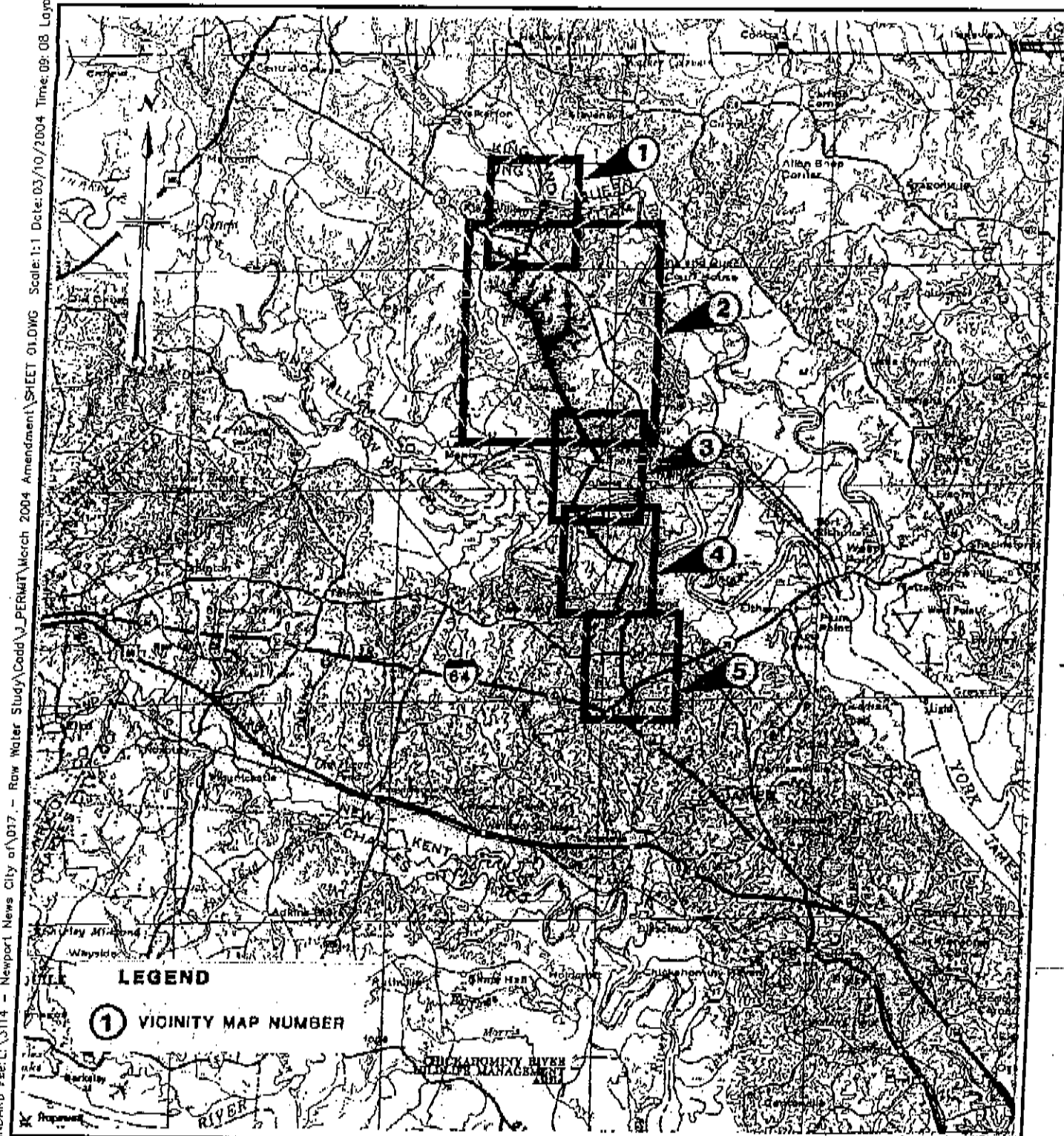
William T. Grisoli  
Brigadier General, U.S. Army  
Division Engineer

\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. A copy of the permit signed by the transferee should be sent to this office.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)



DATUM: USGS

REF: USGS 1:250,000  
RICHMOND

**OVERALL PROJECT  
LOCATION MAP  
& VICINITY MAP INDEX**  
KING WILLIAM RESERVOIR PROJECT

SCALE: 1" = 3.95 MILES

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

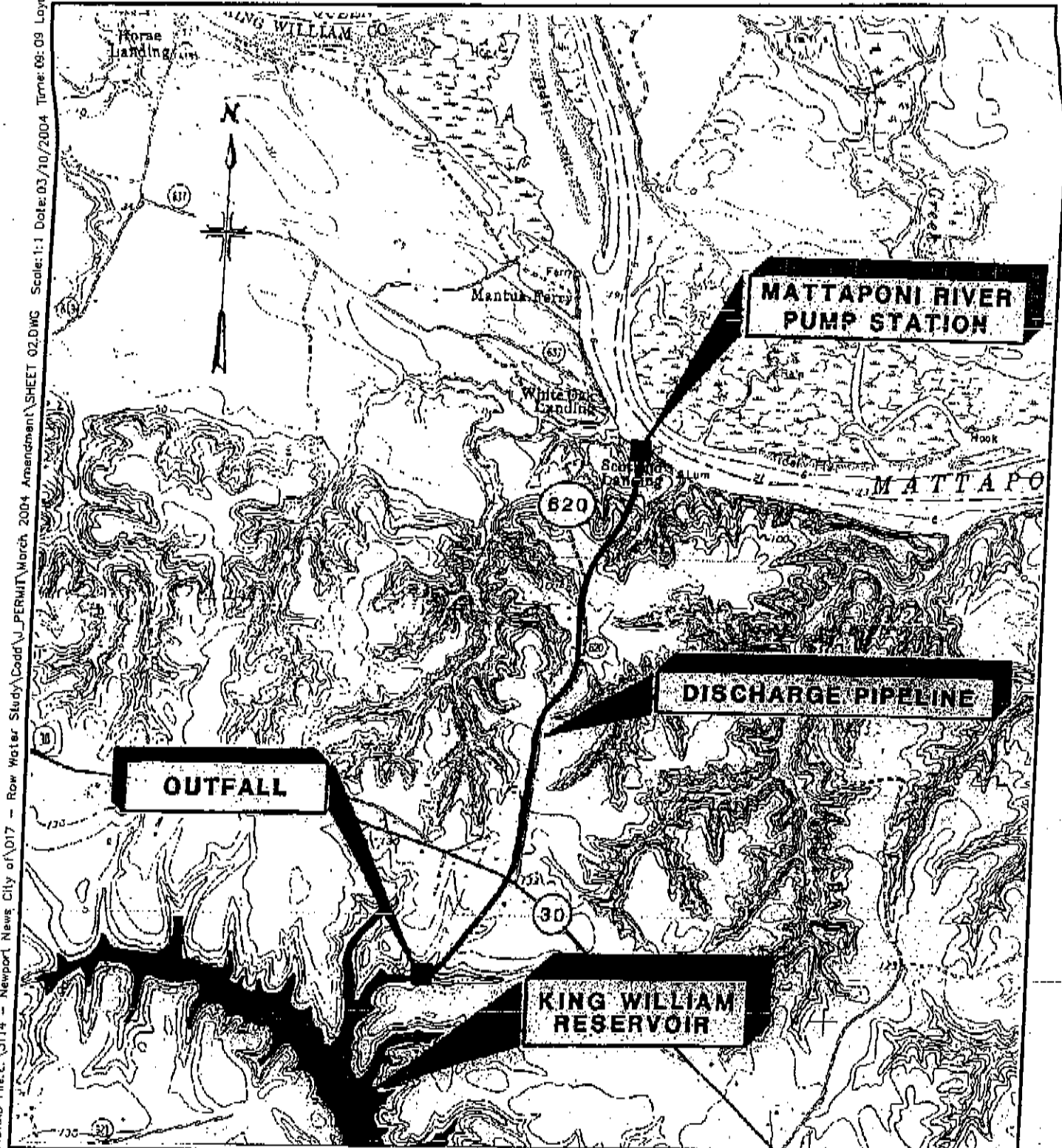
STATE, VA

APPLICANT CITY OF NEWPORT NEWS

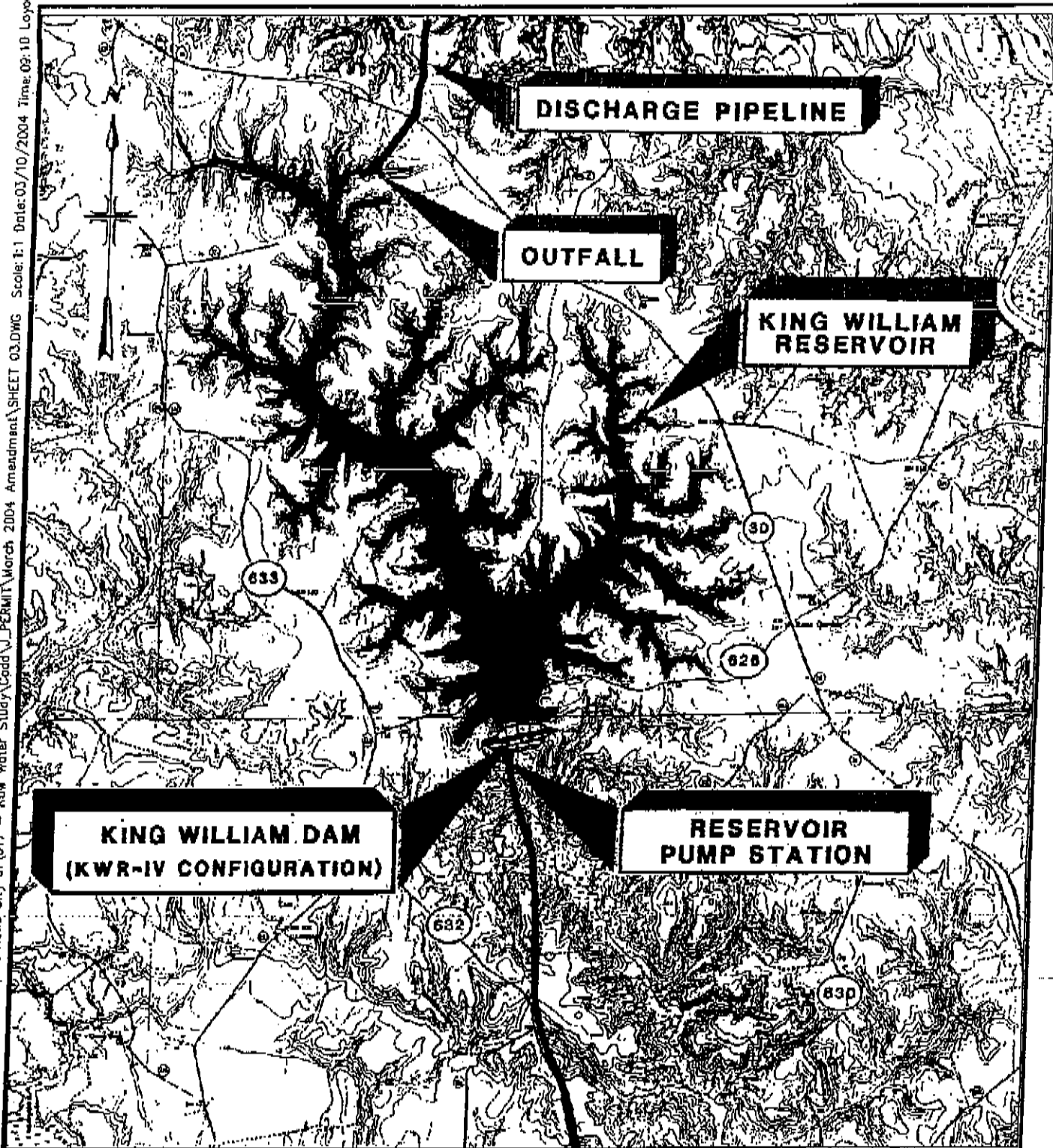
SHEET 1 OF 20

DATE 03/05/04

User: culler Spec: PIRN-E STANDARD File: L:\3114 - Newport News City of\017 - Row Water Study\Cadd\J PERMIT\March 2004 Amendment\SHEET 02.DWG Scale: 1:1 Date: 03/10/2004 Time: 09:09 Layout: Layout1



DATUM: USGS	VICINITY MAP 1	PROPOSED PUBLIC WATER SUPPLY PROJECT
REF: USGS 7.5' KING AND QUEEN COURTHOUSE QUADRANGLE	MATTAPONI RIVER PUMP STATION, DISCHARGE PIPELINE & OUTFALL	COUNTY OF KING WILLIAM & NEW KENT
	SCALE: 1"=2000'	STATE VA
		APPLICANT CITY OF NEWPORT NEWS
		SHEET 2 OF 20
		DATE 03/05/04



DATUM: USGS

REF: USGS 7.5' KING AND  
QUEEN COURTHOUSE AND  
NEW KENT QUADRANGLES  
(REDUCED)

### VICINITY MAP 2

KING WILLIAM RESERVOIR,  
DAM, AND PIPELINE

SCALE: 1"=4000'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 3 OF 20

DATE 03/05/04

User: cutler Spec: PIRNIE STANDARD File: L:\3114 - Newport News City of\017 - Row Water Study\Cadd\PERM\March 2004 Amendment\SHEET 04.DWG Scale: 1:1 Date: 03/10/2004 Time: 09:10 Layout: Layout1



DATUM: USGS  
REF: USGS 7.5' NEW KENT  
QUADRANGLE

### VICINITY MAP 3

PIPELINE

SCALE: 1"=2000'

### PROPOSED PUBLIC WATER SUPPLY PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

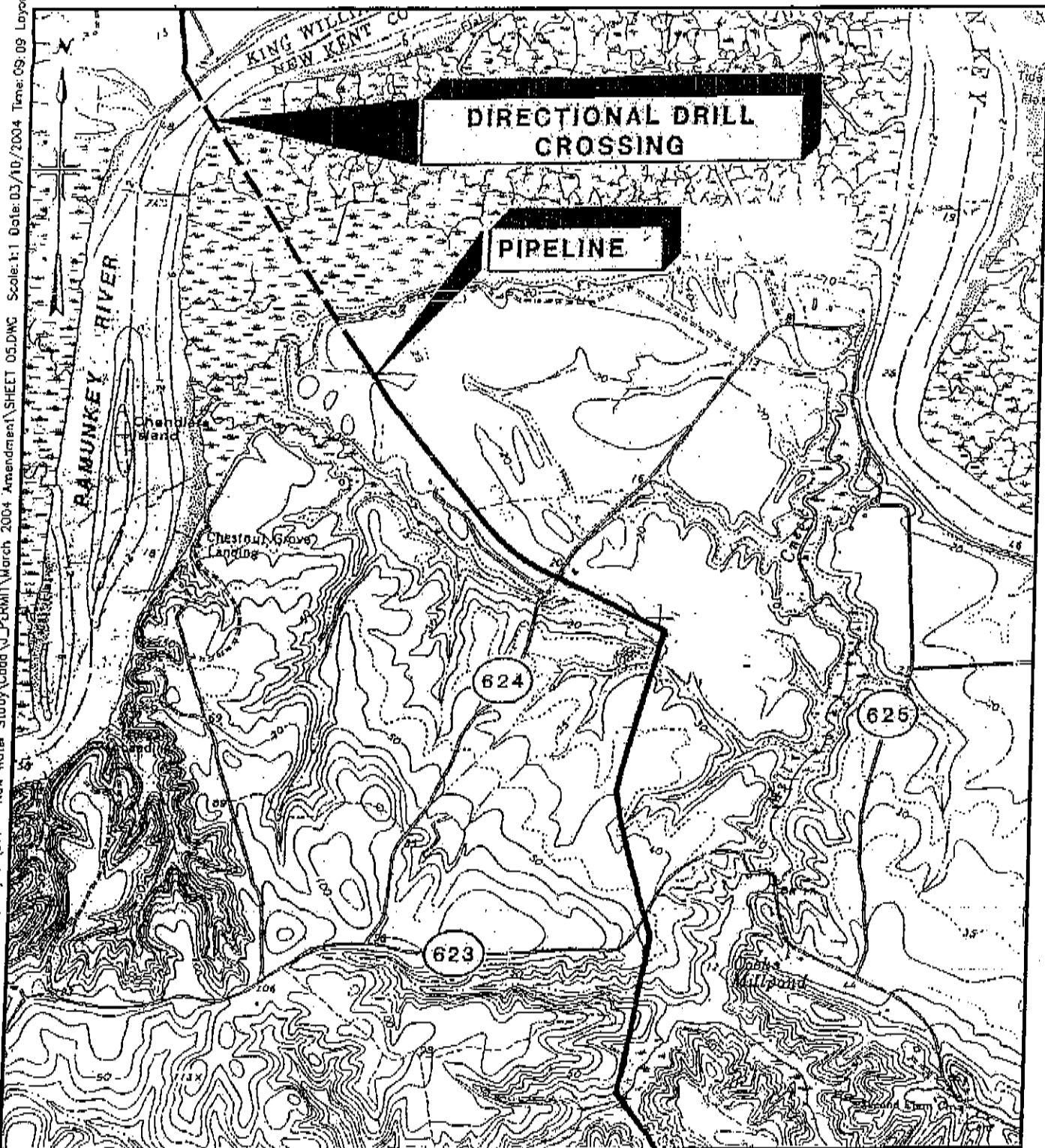
STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 4 OF 20

DATE 03/05/04





DATUM: USGS  
REF: USGS 7.5' NEW KENT  
QUADRANGLE

#### VICINITY MAP 4

PIPELINE &  
PAMUNKEY RIVER CROSSING

SCALE: 1"=2000'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

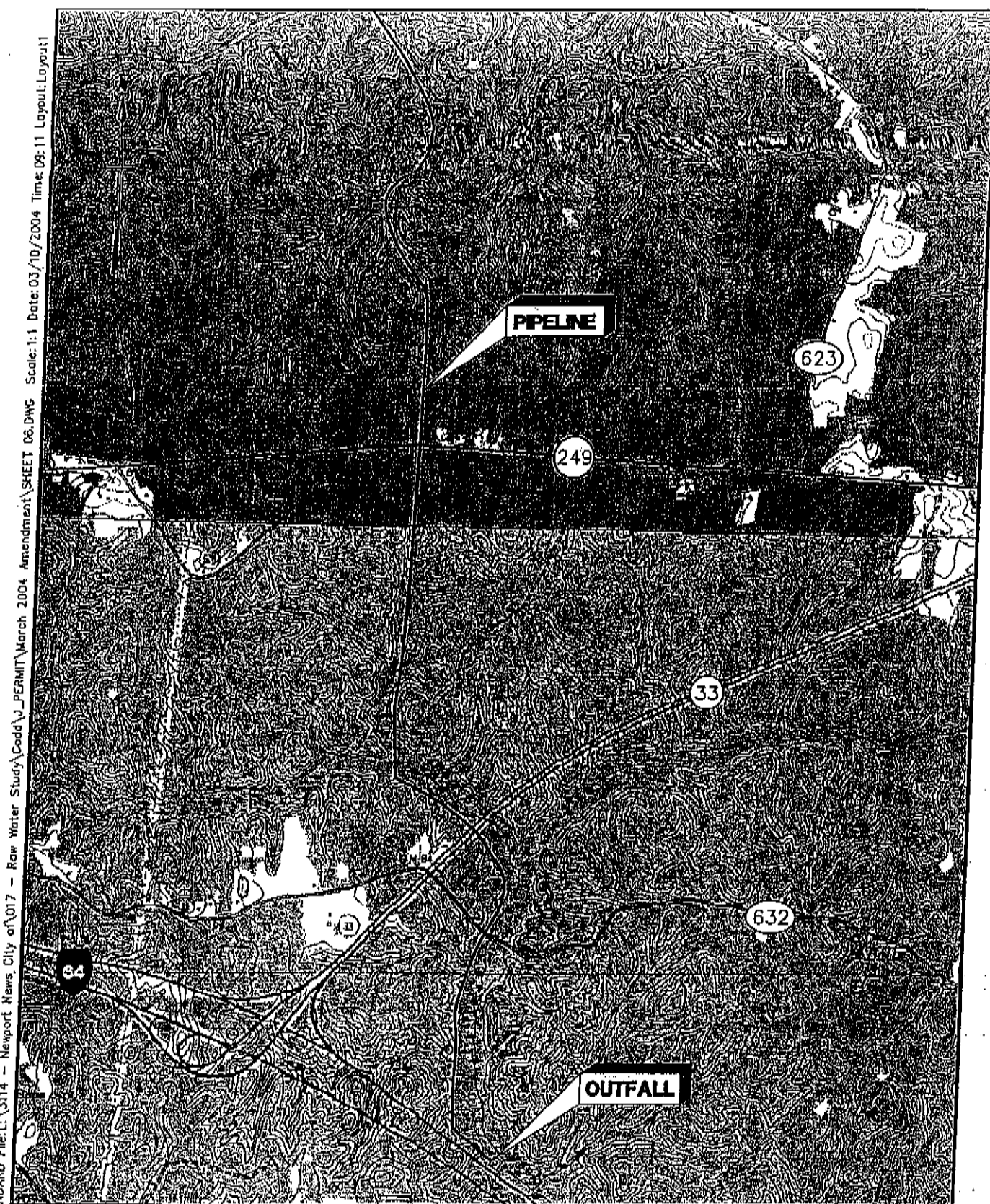
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APPLICANT CITY OF NEWPORT NEWS

SHEET 5 OF 20

DATE 03/05/04

User: outler Spec: PUNE STANDARD File: L:\3114 - Newport News City of\017 - Raw Water Study\Cadd\J\_PERMIT\March 2004 Amendment\SHEET 06.DWG Scale: 1:1 Date: 03/10/2004 Time: 09:11 Layout: Layout1



DATUM: USGS  
REF: USGS 7.5' NEW KENT &  
WALKERS QUADRANGLES

### VICINITY MAP 5

PIPELINE & OUTFALL

SCALE: 1"=2000'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

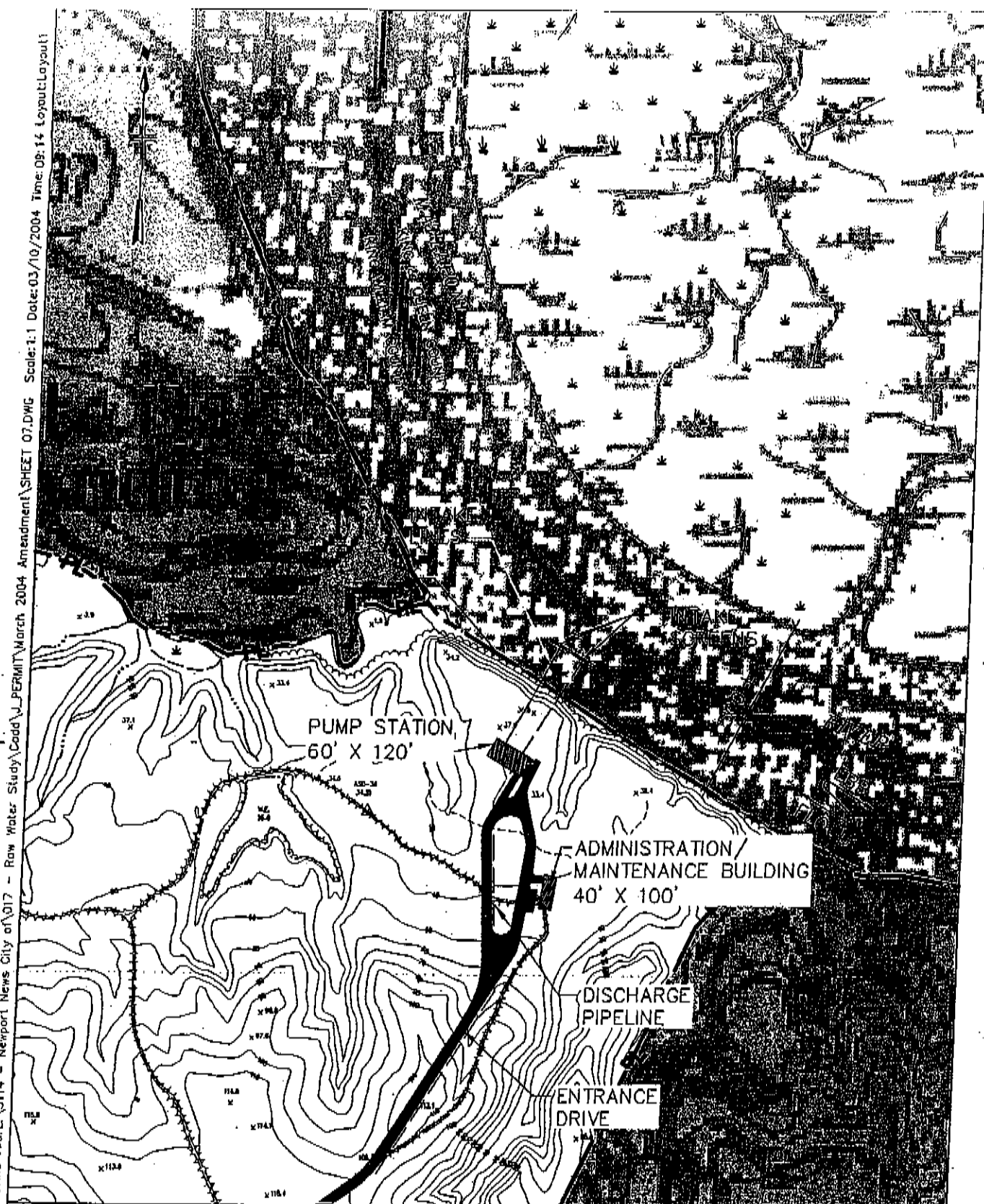
STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 6 OF 20

DATE 03/05/04

User: cutlar Spec: PIRNIE STANDARD File: L:\3114 - Newport News City of\017 - Raw Water Study\Cadd\J PERMIT\March 2004 Amendment\SHEET 07.DWG Scale: 1:1 Date: 03/10/2004 Time: 09:14 Layout: Layout1



DATUM: USGS AND NAVD 88  
REF: USGS 7.5' KING AND QUEEN  
COURTHOUSE QUADRANGLE  
(ENLARGED) AND ASC  
TOPOGRAPHIC MAPPING  
FROM AERIAL PHOTOGRAPHY

PLAN  
  
MATTAPONI RIVER  
PUMP STATION SITE

SCALE: 1"=400'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

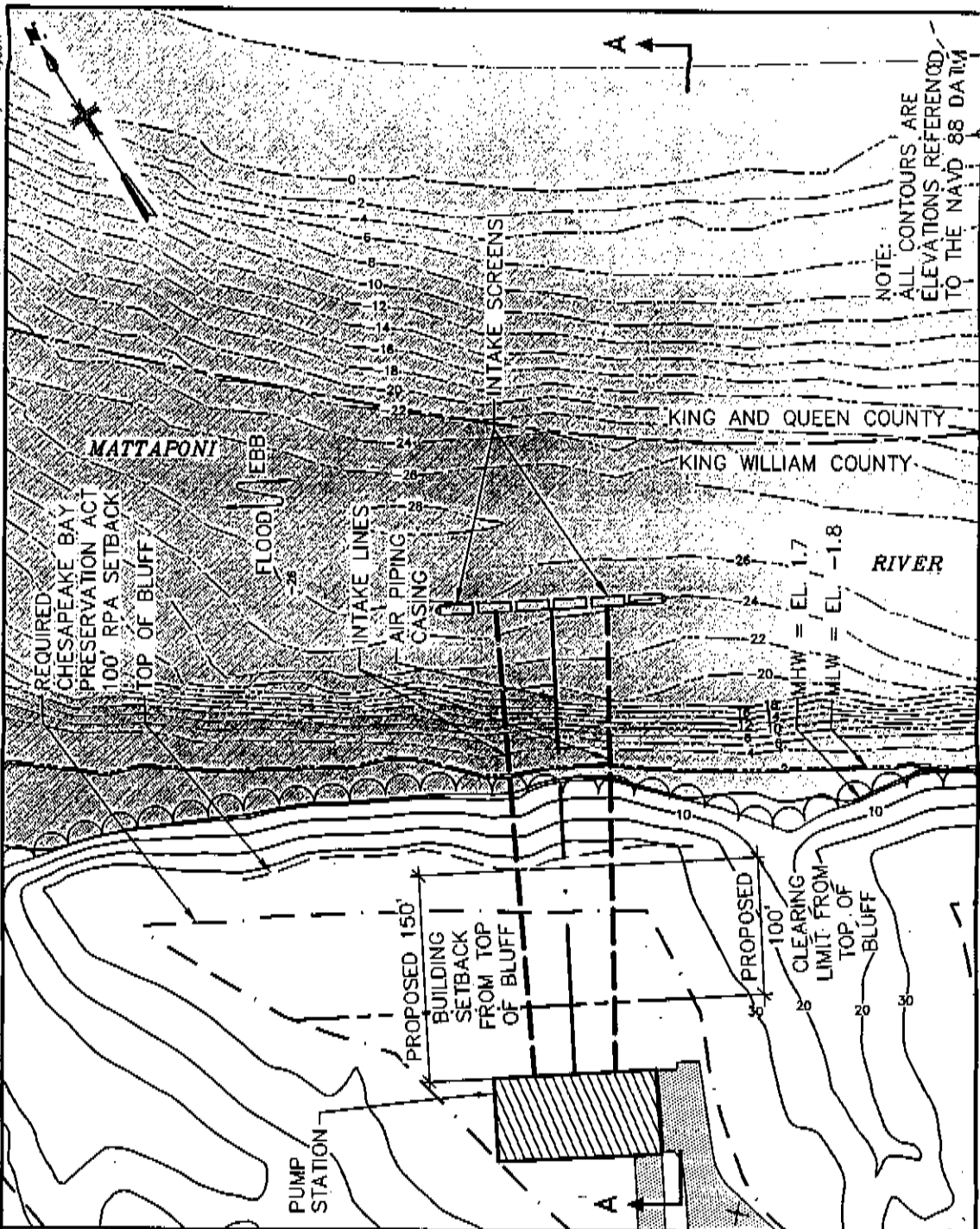
APPLICANT CITY OF NEWPORT NEWS

SHEET 7 OF 20

DATE 03/05/04



User: c:\pwr\Spec: PRN-CE STAND 460 File: L:\3114 - Newport News City of\017 - Raw Water Study\Cadd\A\_PEMIT\March 2004 Amendment\Sheet 09 DWG Scale: 1"=100' Date: 03/10/2004 Time: 09:16 Layout: Lcyl011



NOTE:  
ALL CONTOURS ARE  
ELEVATIONS REFERENCED  
TO THE NAVD 88 DATUM

DATUM: NAVD 88

REF: TOPOGRAPHIC: ASC  
TOPOGRAPHIC MAPPING  
FROM AERIAL PHOTOGRAPHY  
BATHYMETRIC: WATERWAY  
SURVEYS & ENGINEERING  
LTD SURVEY

### PLAN

## MATTAPONI RIVER PUMP STATION INTAKE SYSTEM

SCALE: 1"=100'

### PROPOSED PUBLIC WATER SUPPLY PROJECT

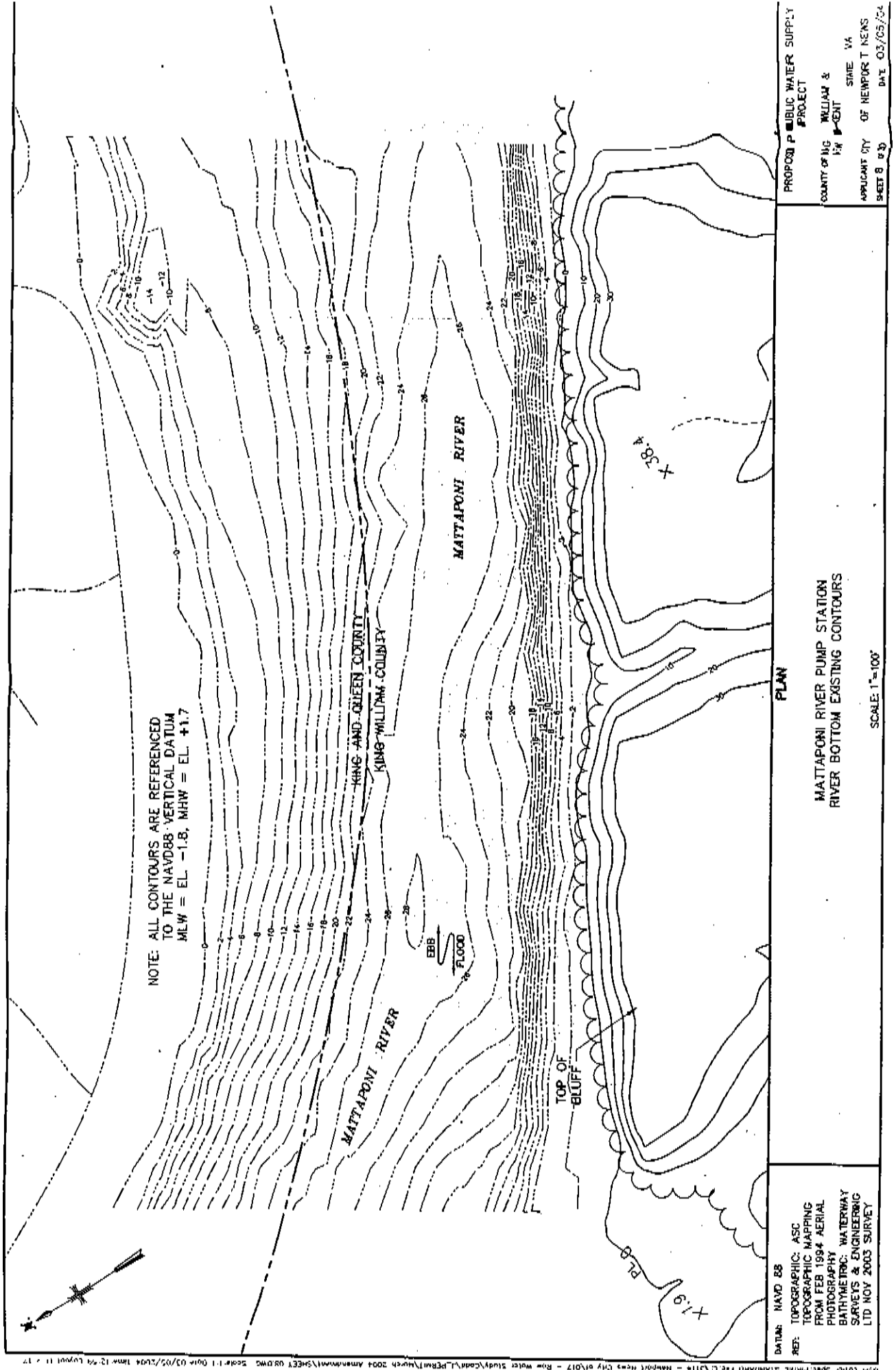
COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 9 OF 20

DATE 03/05/04



NOTE: ALL CONTOURS ARE REFERENCED TO THE NAVD88 VERTICAL DATUM  
 MLW = EL. -1.8, MHW = EL. +1.7

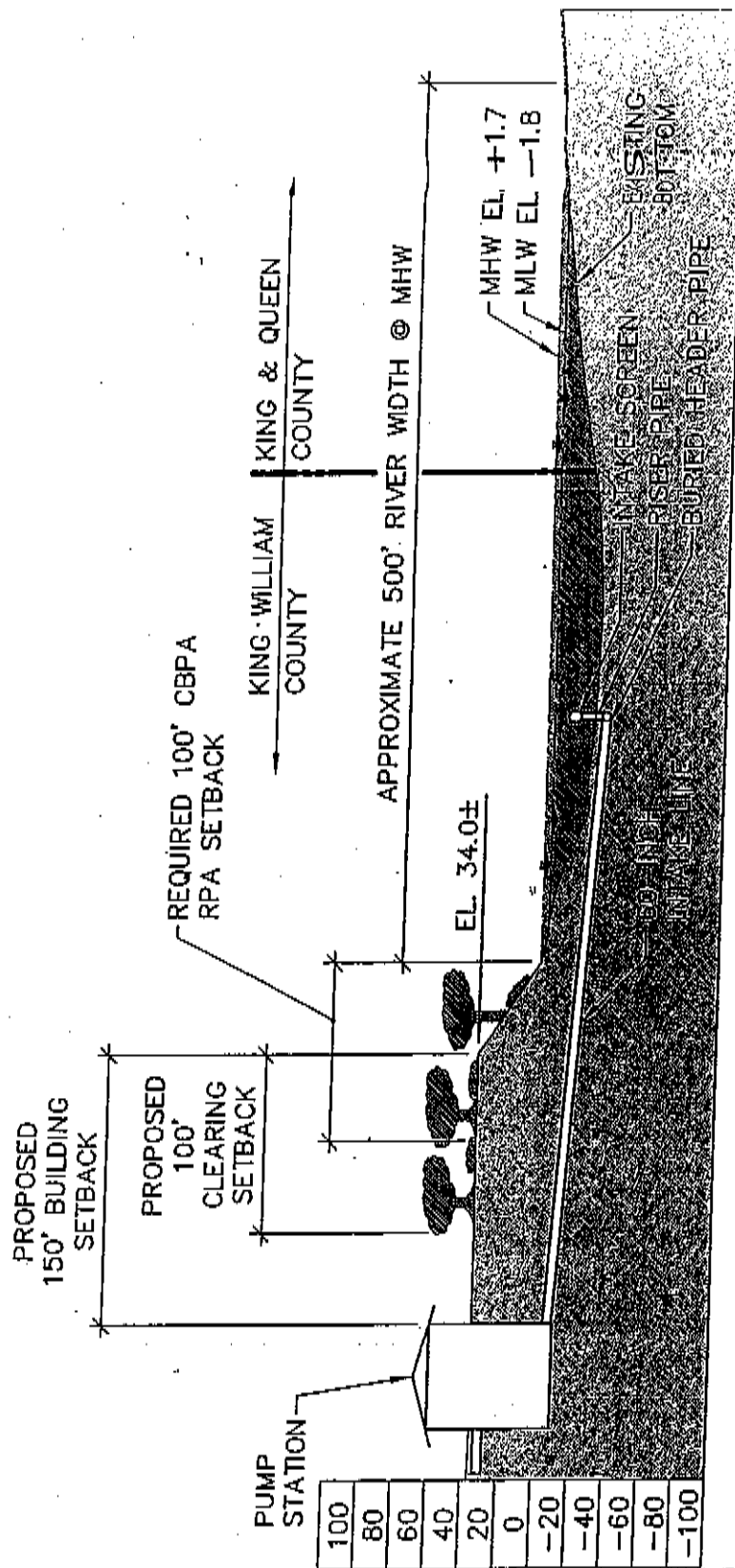
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 FROM FEB 1994 AERIAL  
 PHOTOGRAPHY  
 BATHYMETRIC: WATERWAY  
 SURVEYS & ENGINEERING  
 LTD NOV 2003 SURVEY

PLAN

MATTAPONI RIVER PUMP STATION  
 RIVER BOTTOM EXISTING CONTOURS

SCALE: 1"=100'

PROPOSED PUBLIC WATER SUPPLY PROJECT  
 COUNTY OF KING WILLIAM & KING  
 STATE OF VIRGINIA  
 APPLICANT CITY OF NEWPORT NEWS  
 SHEET 8 OF 9  
 DATE 03/05/04



DATUM: NAVD 88

REF: TOPOGRAPHIC: ASC  
TOPOGRAPHIC MAPPING  
FROM AERIAL PHOTOGRAPHY  
BATHYMETRIC: WATERWAY  
SURVEYS & ENGINEERING  
LTD SURVEY

### PROFILE A-A

MATTAPONI RIVER  
PUMP STATION  
INTAKE SYSTEM

SCALE: HORIZONTAL: 1"=100'  
VERTICAL: 1"=100'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 10 OF 20

DATE 03/05/04

MHW LINE @ EL. 17.7

MHW LINE @ EL. 16.6

TEMPORARY  
WORK BARGE  
STORAGE  
(TYP.)

SPOIL  
BARGE  
(TYP.)

FLOOD W. 100

FILL AREA  
IS WITHIN  
SHEDD PILES

EXTENT OF TEMPORARY  
SHEDD PILE ENCLOSURE  
(ALSO EXCAVATION  
LIMIT LINE)

**NOTES:**

1. TURBIDITY CURTAIN TO BE  
UTILIZED DURING EXCAVATION  
AND SPOIL LOADING OPERATIONS.  
SPOIL BARGE TO BE PLACED  
INSIDE TURBIDITY CURTAIN  
DURING LOADING.

2. CONTOURS ARE ELEVATIONS  
REFERENCED TO THE  
NAVD88 DATUM.

25' MAX

APPROXIMATE LOCATION  
OF TEMPORARY  
TURBIDITY CURTAIN (TYP.)

DATUM: NAVD 88

REF: TOPOGRAPHIC: ASC  
TOPOGRAPHIC MAPPING  
FROM AERIAL PHOTOGRAPHY  
BATHYMETRIC: WATERWAY  
SURVEYS & ENGINEERING  
LTD SURVEY

**PLAN**

MATTAPONI RIVER  
PUMP STATION  
TYPICAL EXCAVATION  
AND FILL PLAN

SCALE: 1"=40'

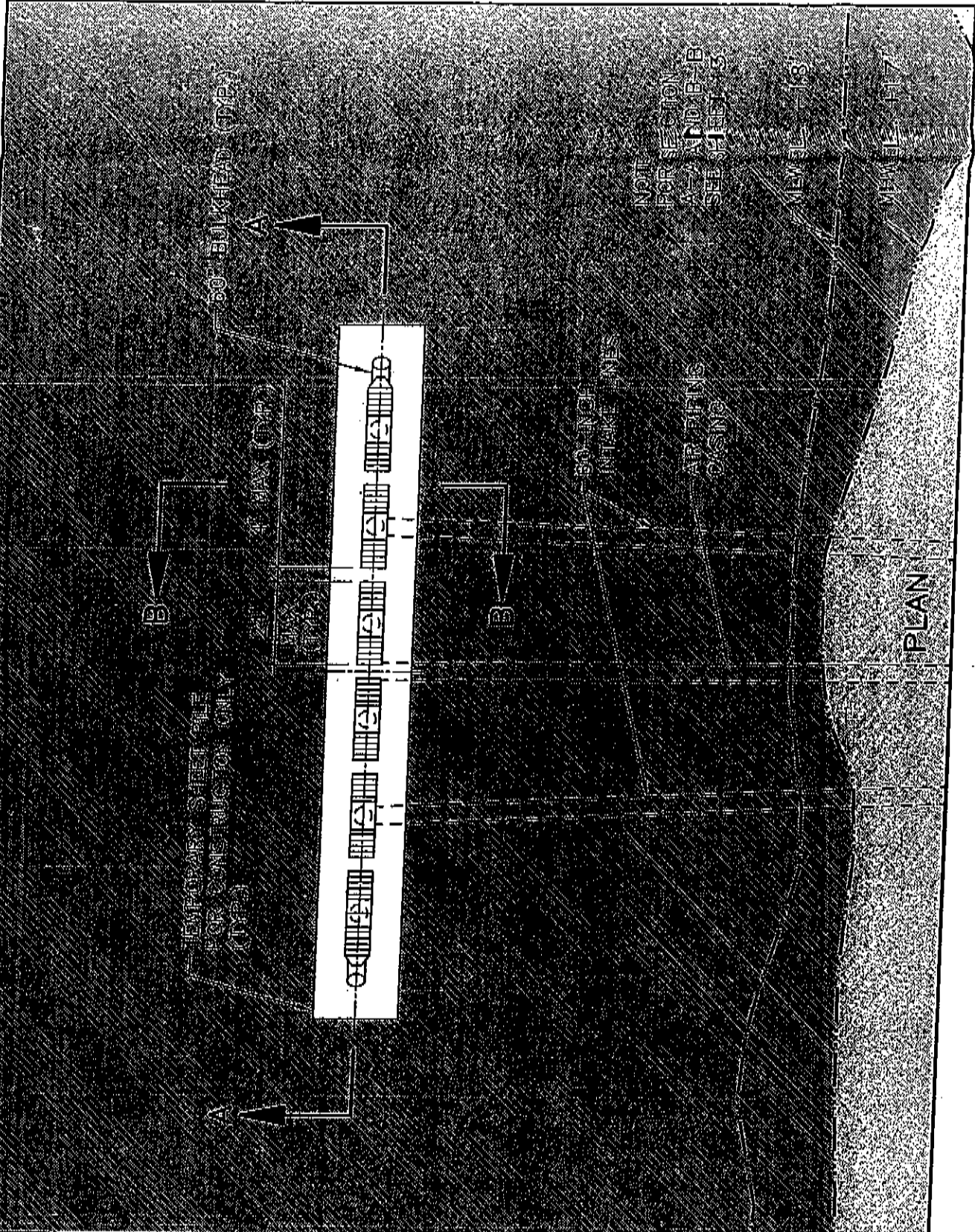
PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 11 OF 20 DATE APRIL 2004



DATUM: NAVD88

REF: BATHYMETRIC SURVEY  
BY WATERWAY SURVEYS  
& ENGINEERING LTD.

### PLAN

MATTAPONI RIVER  
PUMP STATION  
INTAKE SCREEN ARRAY

SCALE: 1"=40'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

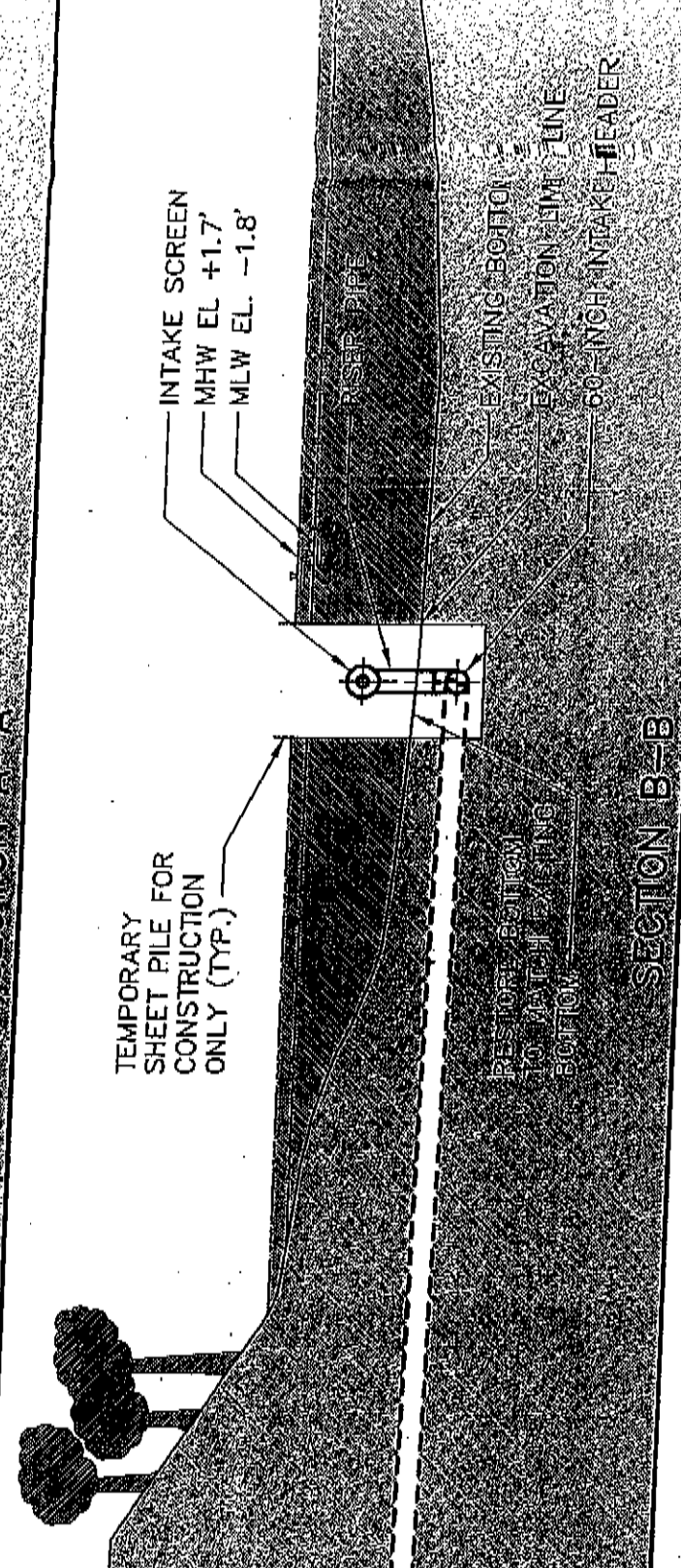
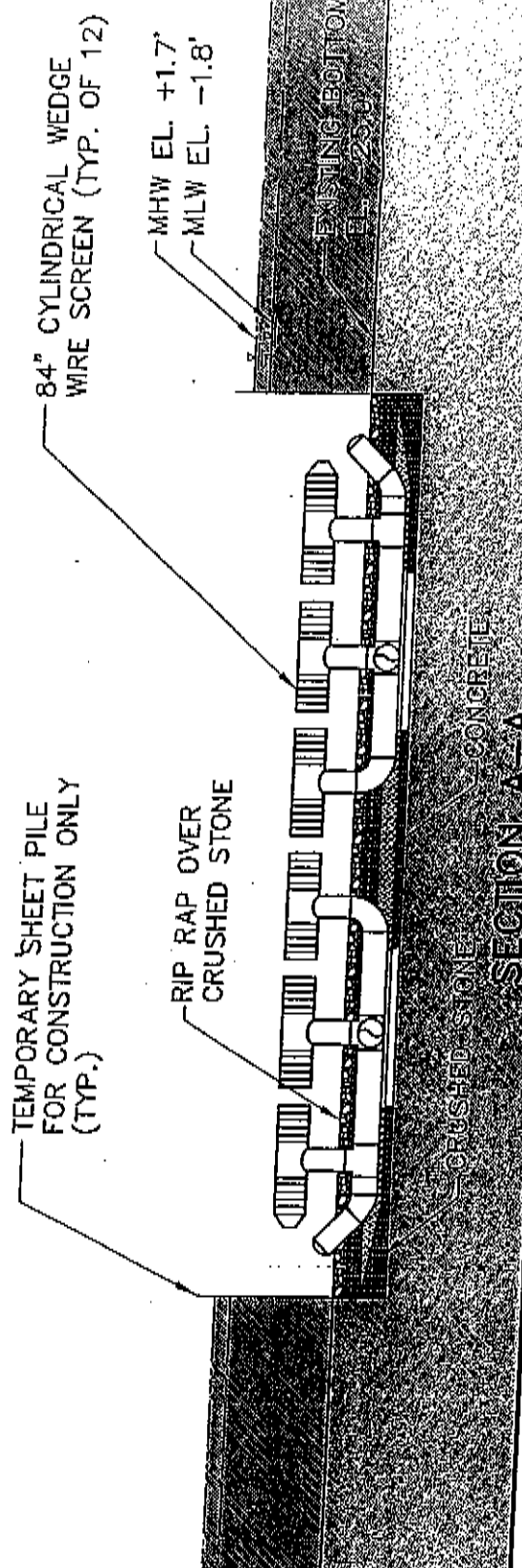
APPLICANT CITY OF NEWPORT NEWS

SHEET 12 OF 20

DATE 03/05/04

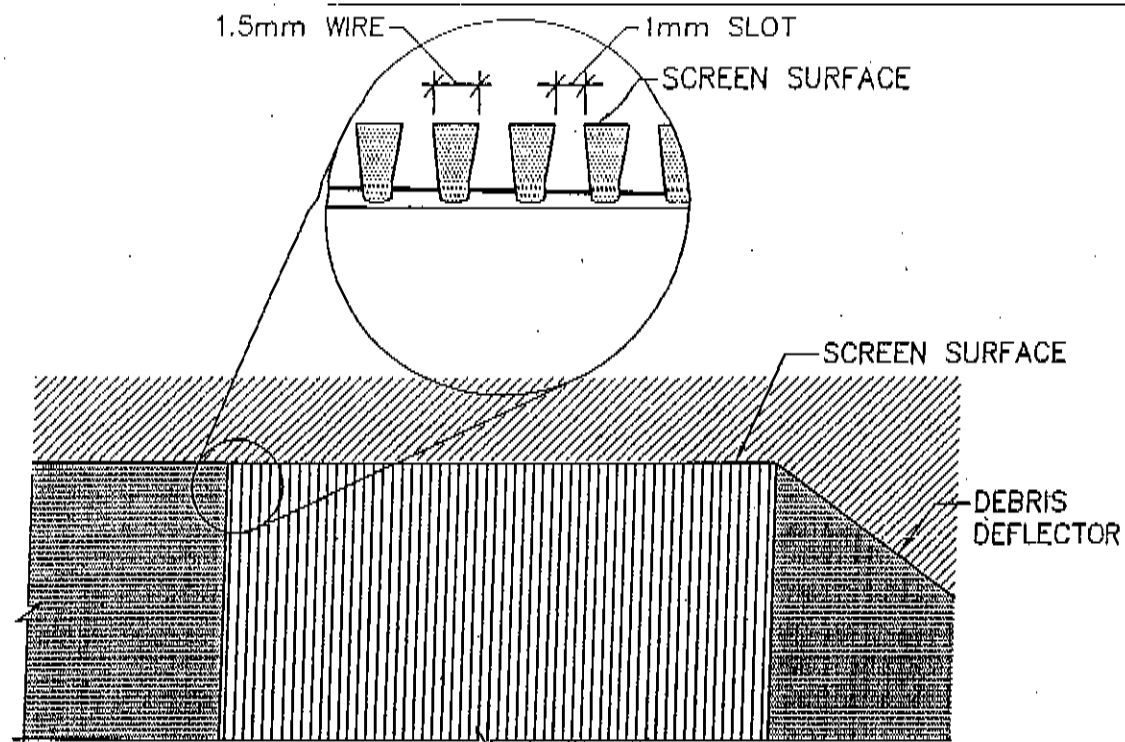


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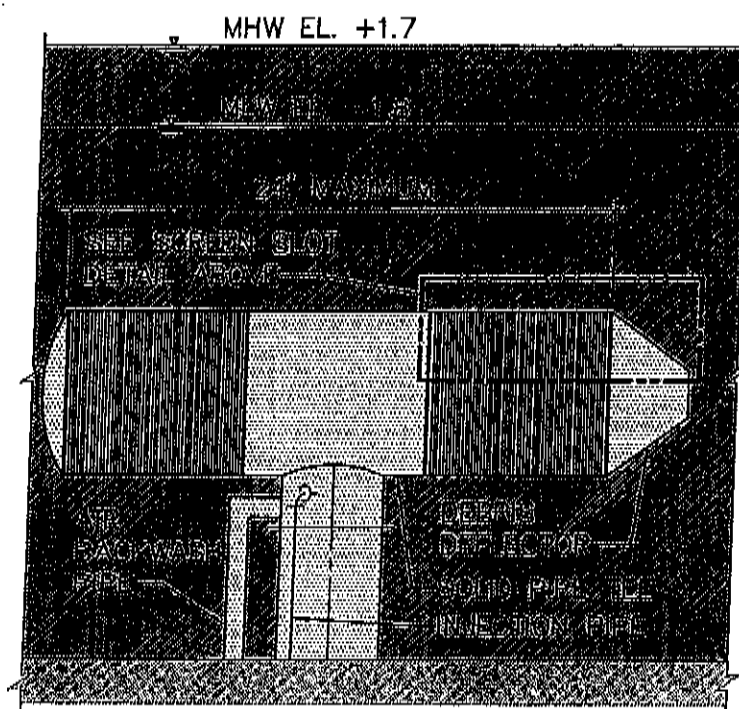


DATUM: NAVD88	SECTIONS	PROPOSED PUBLIC WATER SUPPLY PROJECT
REF: BATHYMETRIC SURVEY BY WATERWAY SURVEYS & ENGINEERING LTD.		
	MATTAPONI RIVER PUMP STATION INTAKE SCREEN ARRAY	COUNTY OF KING WILLIAM & NEW KENT
	SCALE: 1"=40'	STATE VA
		APPLICANT, CITY OF NEWPORT NEWS
		SHEET 13 OF 20 DATE 03/05/04

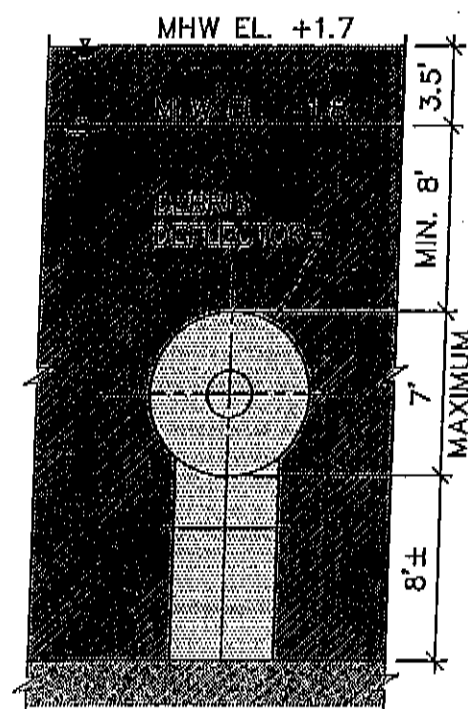
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**SCREEN SLOT DETAIL**  
NOT TO SCALE



**SIDE SECTION**  
SCALE: 1/8" = 1'-0"



**END SECTION**  
SCALE: 1/8" = 1'-0"

DATUM: NAVD 88  
REF: USGS 7.5' KING AND  
QUEEN COURTHOUSE  
QUADRANGLE

**SECTIONS AND DETAILS**

MATTAPONI RIVER PUMP STATION  
TEE SCREEN ASSEMBLY

SCALE: AS NOTED

**PROPOSED PUBLIC WATER SUPPLY  
PROJECT**

COUNTY OF KING WILLIAM &  
NEW KENT

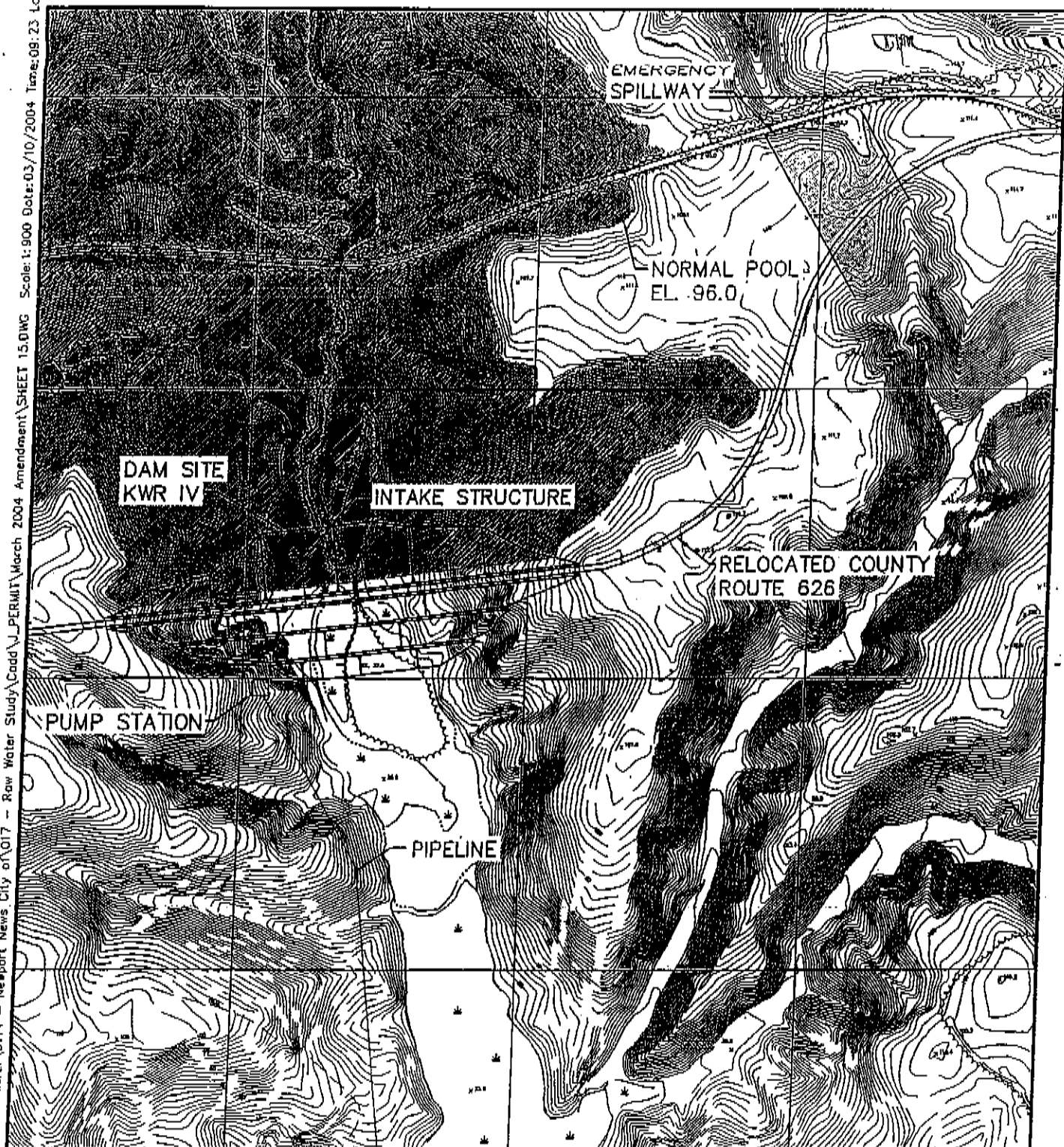
STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 14 OF 20

DATE 03/05/04

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DATUM: NAVD 88  
REF: ASC TOPOGRAPHIC MAPPING  
FROM AERIAL PHOTOGRAPHY

### PLAN

KING WILLIAM DAM  
AND EMERGENCY SPILLWAY

SCALE: 1" = 500'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

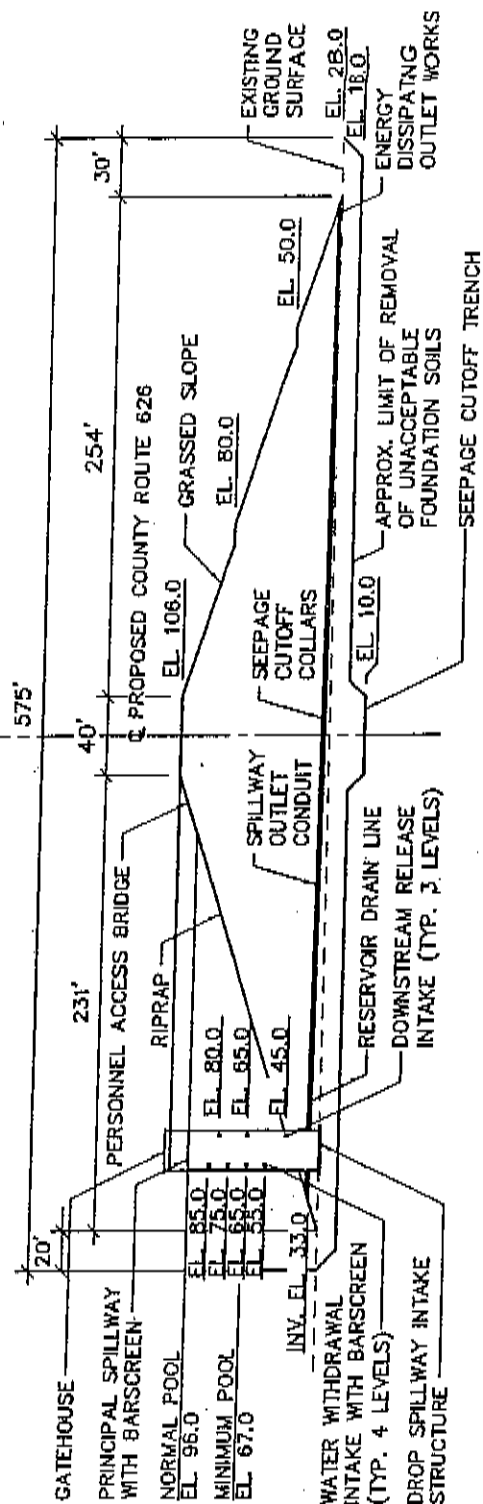
STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 15 OF 20

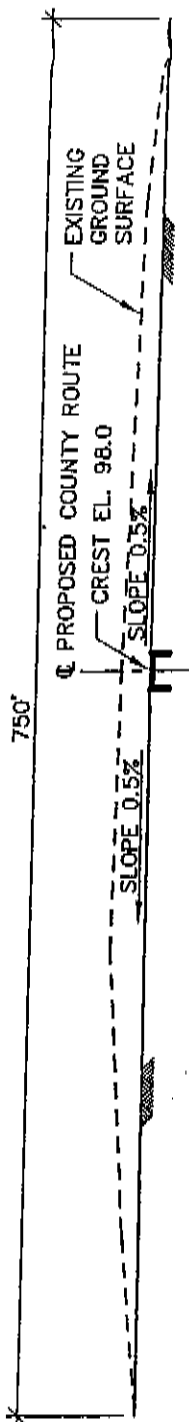
DATE 03/05/04





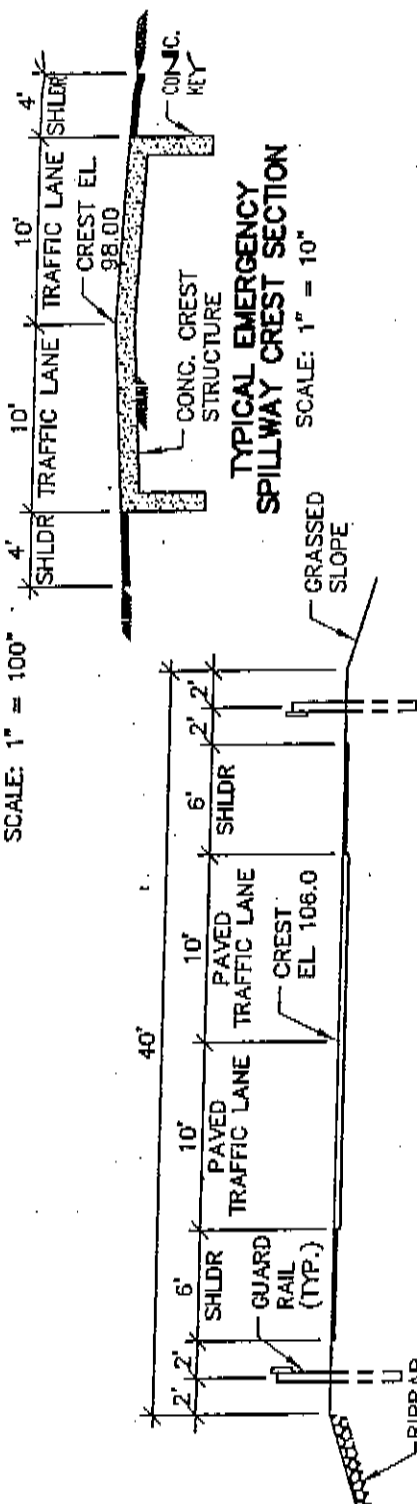
**PRINCIPAL SPILLWAY AND TYPICAL MAIN DAM SECTION**

SCALE: 1" = 100'



**TYPICAL EMERGENCY SPILLWAY SECTION**

SCALE: 1" = 100'



**TYPICAL DAM CREST SECTION**

SCALE: 1" = 10'

DATUM: NAVD 88  
REF: N/A

**TYPICAL SECTIONS**

KING WILLIAM  
DAM AND EMERGENCY  
SPILLWAY

SCALE AS NOTED

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

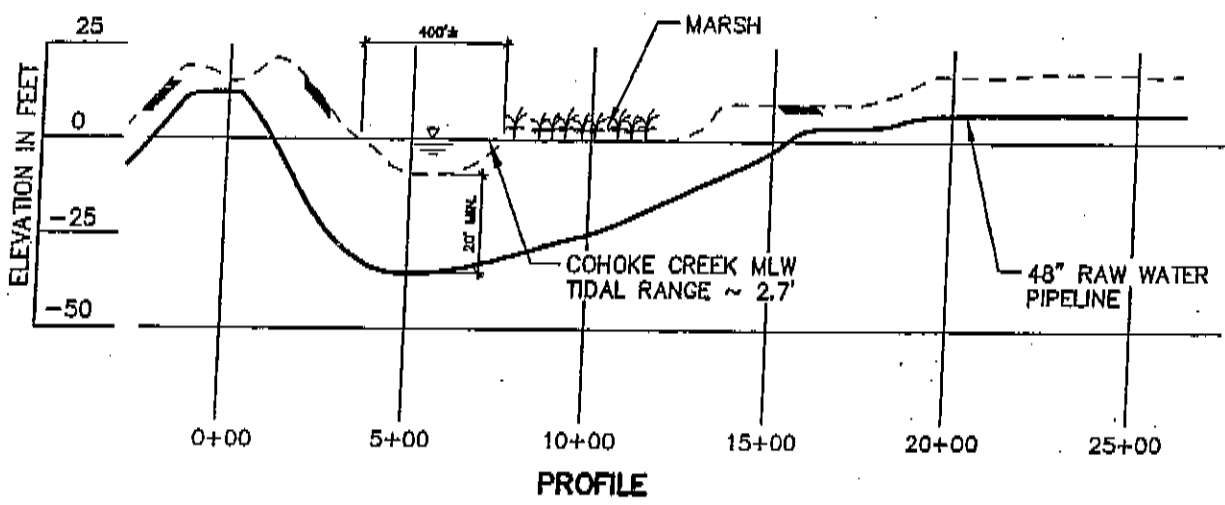
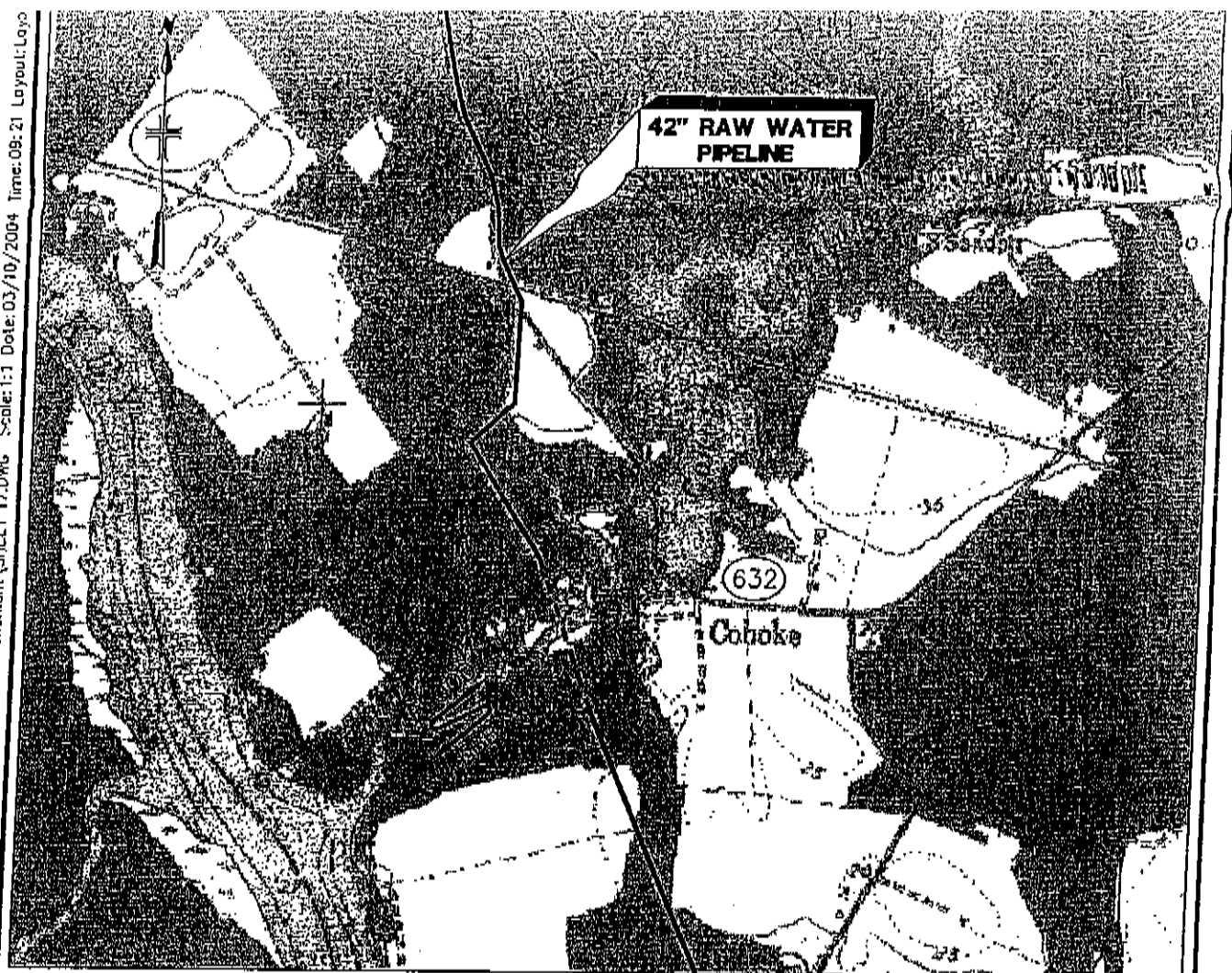
STATE VA

APPLICANT CITY OF NEWPORT NEWS

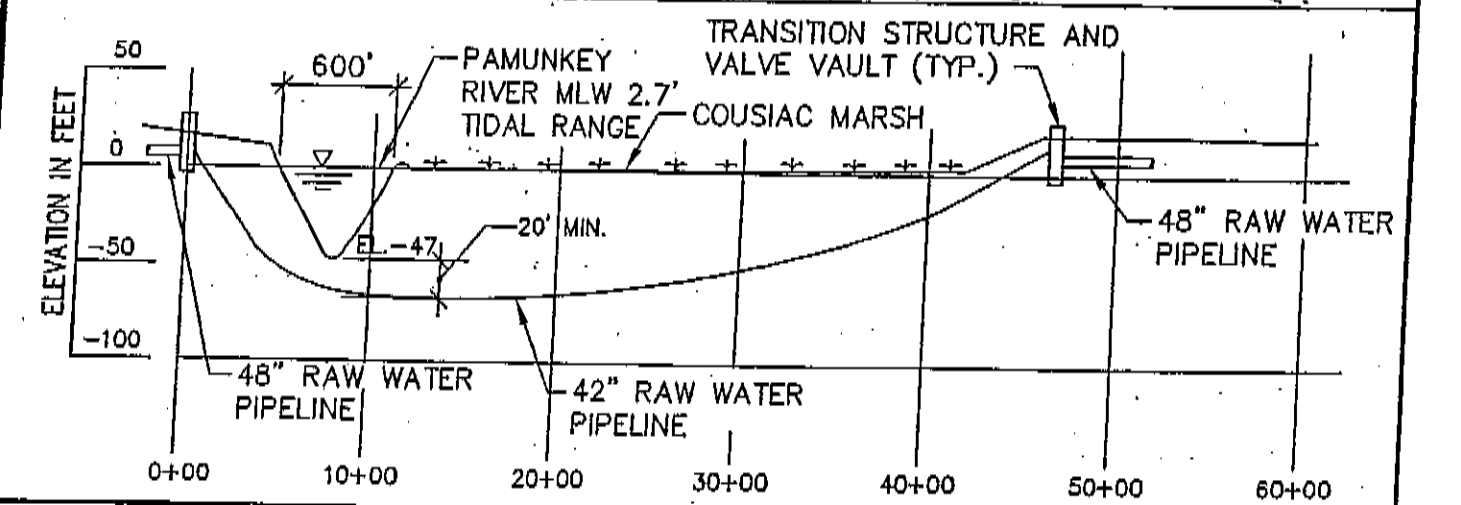
SHEET 16 OF 20

DATE 03/05/04

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DATUM: MLW - MEAN LOW WATER REF: USGS 7.5' NEW KENT QUADRANGLE (ENLARGED)	<b>PLAN AND PROFILE</b>  COHOKE MILL CREEK DIRECTIONAL DRILL  SCALE: HORIZONTAL: 1" = 500' VERTICAL: 1" = 100'	<b>PROPOSED PUBLIC WATER SUPPLY PROJECT</b>  COUNTY OF KING WILLIAM & NEW KENT STATE VA APPLICANT CITY OF NEWPORT NEWS SHEET 17 OF 20 DATE 03/05/04
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PROPOSED PUBLIC WATER SUPPLY  
PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

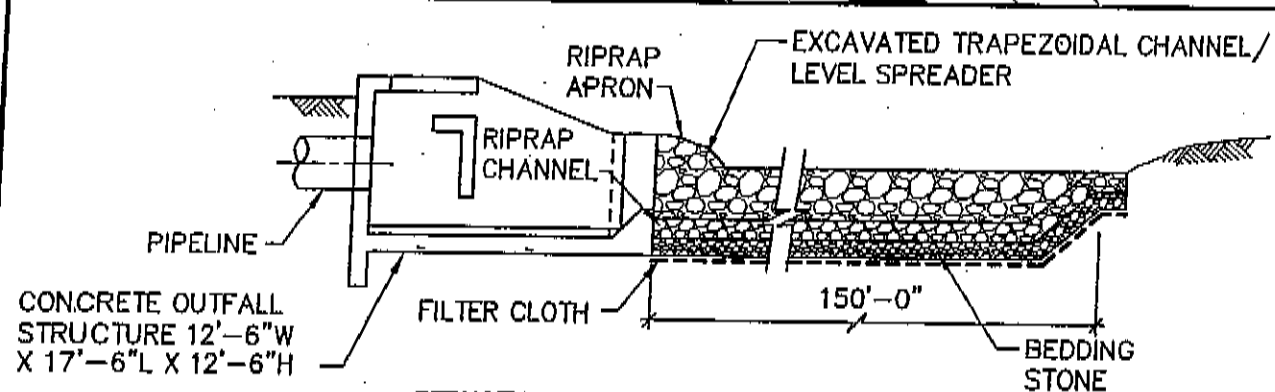
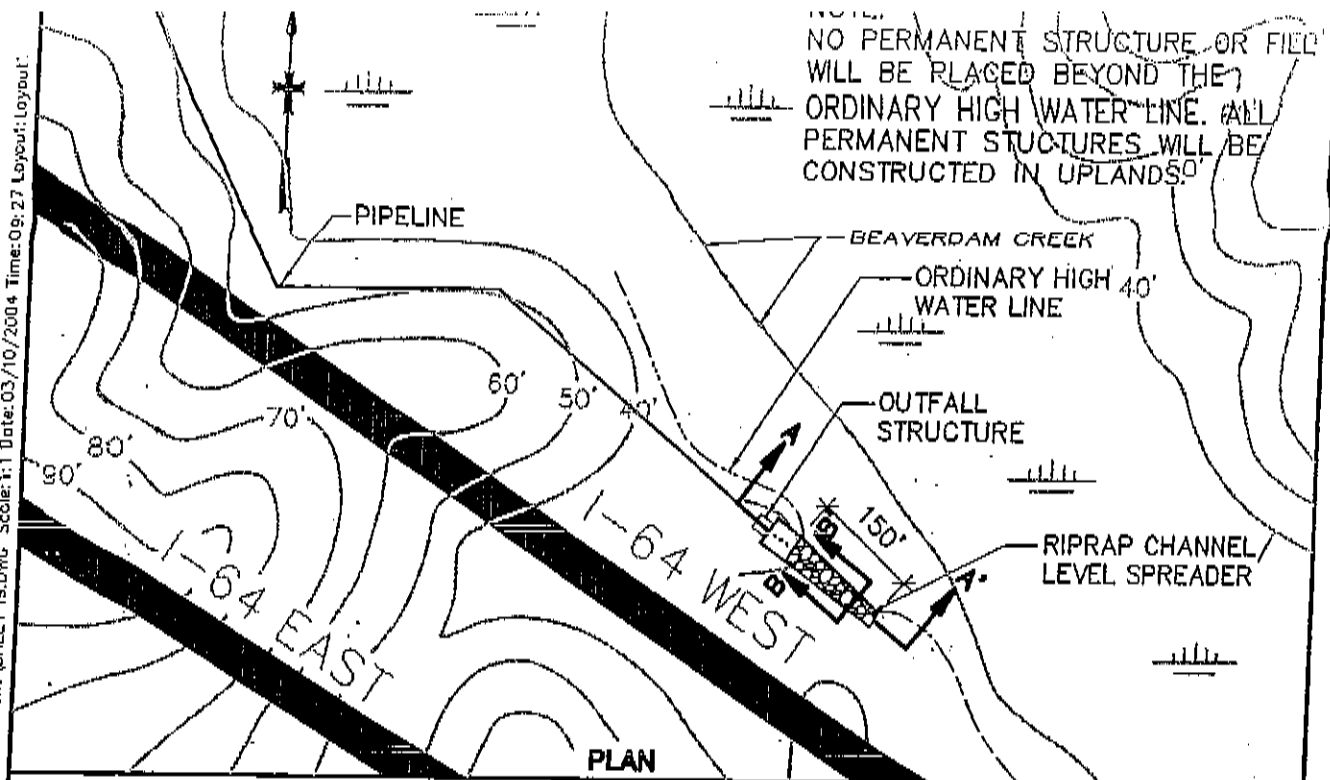
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APPLICANT CITY OF NEWPORT NEWS

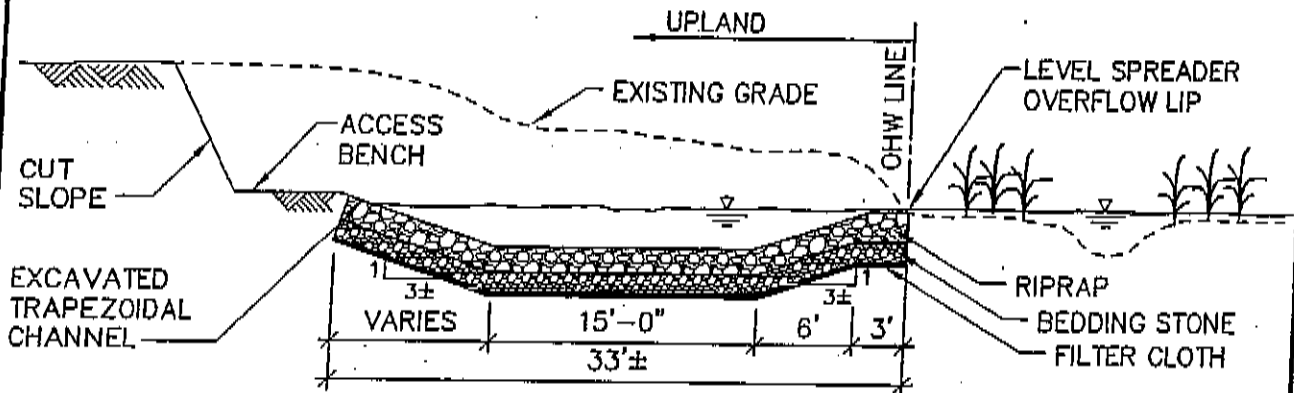
SHEET 18 OF 20

DATE 03/05/04

NO PERMANENT STRUCTURE OR FILL  
WILL BE PLACED BEYOND THE  
ORDINARY HIGH WATER LINE. ALL  
PERMANENT STRUCTURES WILL BE  
CONSTRUCTED IN UPLANDS.



STRUCTURE CROSS-SECTION A-A'



RIPRAP CHANNEL/LEVEL SPREADER CROSS-SECTION B-B'

DATUM: USGS

REF: USGS 7.5' WALKERS  
QUADRANGLE (ENLARGED)

### PLAN AND SECTIONS

BEAVERDAM CREEK OUTFALL  
STRUCTURE AND LEVEL  
SPREADER CHANNEL

SCALE: PLAN: 1" = 200'  
SECTIONS: 1" = 10'

PROPOSED PUBLIC WATER SUPPLY  
PROJECT

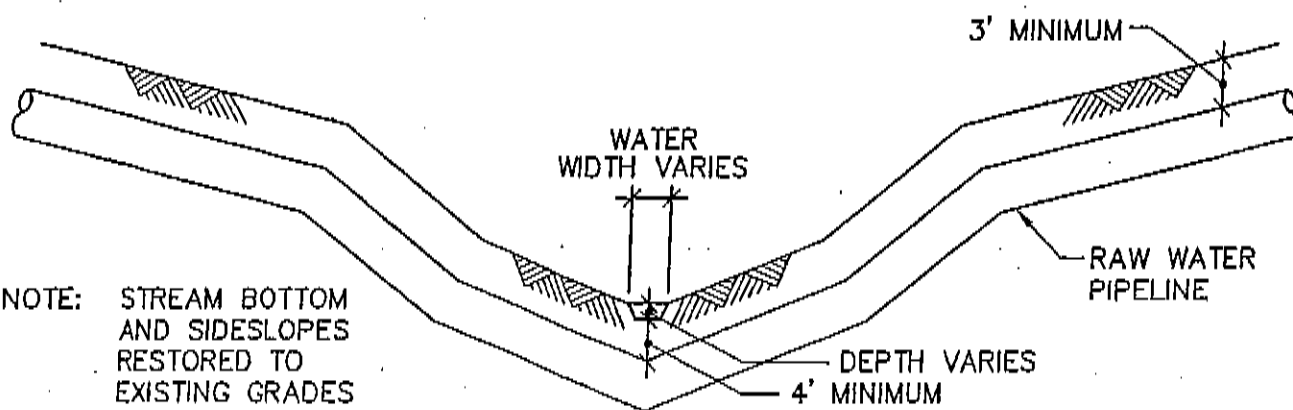
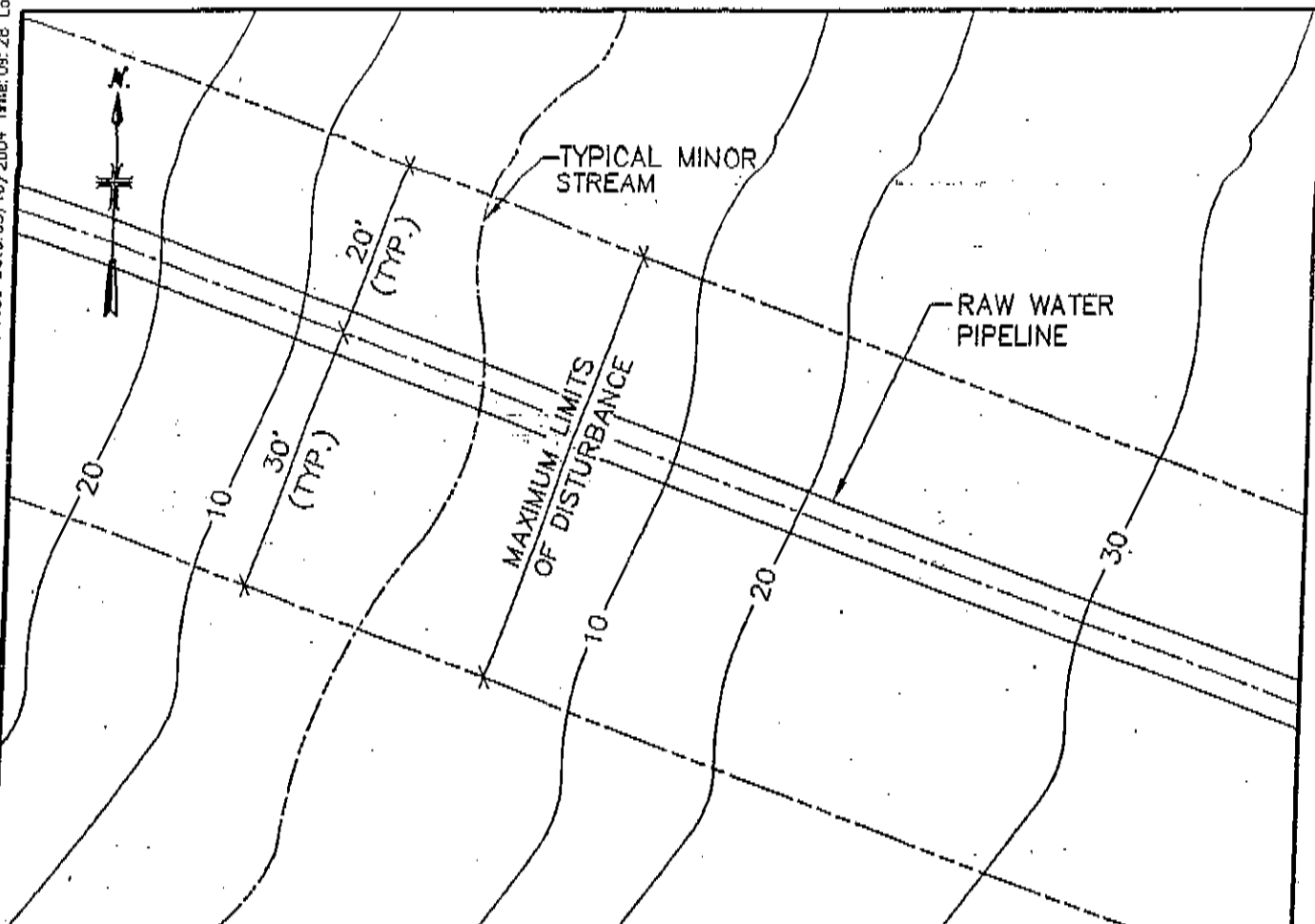
COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 19 OF 20

DATE 03/05/04



NOTE: STREAM BOTTOM  
AND SIDESLOPES  
RESTORED TO  
EXISTING GRADES

DATUM: USGS (ENLARGED)

REF: N/A

## PLAN AND SECTION

### TYPICAL PIPELINE STREAM CROSSING

SCALE: 1" = 20'

# PROPOSED PUBLIC WATER SUPPLY PROJECT

COUNTY OF KING WILLIAM &  
NEW KENT

STATE VA

APPLICANT CITY OF NEWPORT NEWS

SHEET 20 OF 20      DATE 03/05/04



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Street address: 629 East Main Street, Richmond, Virginia 23219  
Mailing address: P.O. Box 10009, Richmond, Virginia 23240  
Fax (804) 698-4500 TDD (804) 698-4021  
www.deq.state.va.us

Robert G. Burnley  
Director

(804) 698-4000  
1-800-592-5482

VWP Permit No. 93-0902  
Effective Date: December 22, 1997  
Major Modification Date: December 27, 2002  
Expiration Date: December 22, 2007

### VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

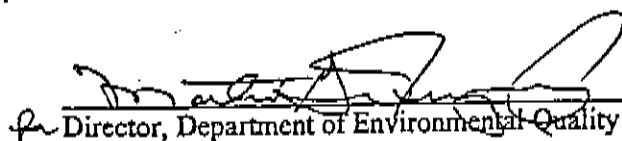
Based upon an examination of the information submitted by the owner and in compliance with Section 401 of the Clean Water Act as amended (33 USC 1251 et seq) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards.


Permittee: City of Newport News  
Address: 2400 Washington Avenue  
Newport News, Virginia 23607

Activity Locations: Intake at Scotland Landing on the Mattaponi River and dam and reservoir (King William Reservoir) on Cohoke Creek South of Route 626 in King William County and pipelines from Scotland Landing to the reservoir and from the reservoir to the headwaters of Beaverdam Creek in New Kent County.

Activity Description: The construction and operation of a water supply intake on the Mattaponi River, a dam and reservoir (King William Reservoir) on Cohoke Creek, a pipeline from the intake on the Mattaponi River to King William Reservoir and a pump station and pipeline from the King William Reservoir to the headwaters of Beaverdam Creek in New Kent County and the transfer of water from the Mattaponi River to King William Reservoir to Beaverdam Creek and Diascund Creek Reservoir.

The authorized discharge shall be in accordance with this cover page, Part I - Special Conditions, Part II - General Conditions.

  
for Director, Department of Environmental Quality

  
Date December 27, 2002

## SPECIAL CONDITIONS

### A. Miscellaneous Conditions

1. This permit authorizes the construction and operation of the following water resources infrastructure:
  - a. the construction including associated dredging of a 75 million gallon per day intake structure, pumping station and boat dock on the Mattaponi River in King William County at Scotland Landing,
  - b. the construction of a 54 inch diameter, 1.5 mile long pipeline from Scotland Landing to King William Reservoir,
  - c. the construction of a 78 feet high, 1700 feet long dam on Cohoke Creek 0.2 miles downstream from the Route 626 crossing of Cohoke Creek; the dam and reservoir will fill or inundate approximately 437 acres of non tidal wetlands and open water habitat. When created the King William Reservoir will have a normal elevation 96 feet above mean sea level and form a lake of approximately 1526 acres.
  - d. the construction of a 50 million gallon per day pump station and an 11.7 mile long pipeline which varies in diameter between 42 and 48 inches and all associated stream and wetland crossings from King William Reservoir to Beaverdam Creek in New Kent County.
2. The conditions and limitations specified in the application and the supplemental materials submitted by the owner shall be adhered to.
3. The permittee shall employ measures to prevent spills of fuels or lubricants into State waters. The Department of Environmental Quality must be notified if spills do occur (804/527-5200).
4. All construction and installation associated with the project shall be accomplished in such a manner that construction material or waste material is not to be discharged into State waters.

5. The permittee shall advise the Director in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substances, and shall not take measures to remove the obstruction, material, or toxic substance, or change the location of the structure until written approval by the Director or his authorized representative is received.
6. This permit has a term of 10 years. This permit expires 10 years from its issuance date. This permit will need to be renewed. Reapplication must be made no less than 180 days prior to the expiration date of this permit.
7. All fill material shall be clean and free of toxic contaminants in toxic amounts.
8. The permittee shall insure that erosion and sedimentation control devices are in place prior to clearing and grading and that they are maintained in good working order to minimize impacts to State waters.
9. To prevent the impingement and entrainment of fish eggs, larvae and other aquatic life, the intake screens shall be designed so that screen openings are not larger than one millimeter in width and screen face intake velocities are not faster than 0.25 feet per second.
10. No instream work or dredging associated with the construction of the intake or boat dock on the Mattaponi River is allowed between the February 15th and June 30th.
11. The release of water from King William Reservoir to Cohoke Creek and to Beaverdam Creek shall not cause the violation of water quality standards for dissolved oxygen, temperature or pH. For Cohoke Creek and for Beaverdam Creek, the water quality standards for dissolved oxygen are 4.0 mg/l on an instantaneous basis and 5.0 mg/l on an average basis. The temperature standard is a maximum of 32 degrees centigrade and the pH standard is between 6.0 and 9.0 standard units.
12. There shall be no discharge, other than air from the intake screens on the Mattaponi River unless there is a documented infestation of zebra mussels shown to be on the intake screens.
13. Any additional intakes other than the ones required for the release of water to Cohoke Creek or the transfer of water to Diascund Reservoir will require a Virginia Water Protection Permit from the Department of Environmental Quality.



**B. Water Withdrawal, Transfer and Release Conditions**

1. The maximum daily withdrawal from the Mattaponi River shall not exceed 75 million gallons.
2. The maximum single day transfer from King William Reservoir to Diascund Creek Reservoir shall not exceed 50 million gallons per day.
3. The maximum 36 month rolling average interbasin transfer from King William Reservoir to New Kent County and Diascund Reservoir shall not exceed a total of 29.044 billion gallons in 36 months (an average of 26.5 million gallons per day).
4. The permittee shall maintain a minimum release below the dam at Cohoke Creek equal to the median monthly flow of Cohoke Creek at the dam site. The median monthly flows for Cohoke Creek at the dam site shall be calculated as a part of the development of the operations and maintenance manual required for DEQ approval by Special Condition B.7 of this permit. This minimum instream flowby shall be maintained during filling of the reservoir as well as after the dam is completed and the reservoir is filled.
5. Unless the permittee has instituted mandatory emergency drought conservation measures, the permittee shall not withdraw water from the Mattaponi River whenever the freshwater inflow to the Mattaponi River at Scotland Landing is below the following values nor shall the permittee withdraw water at a rate that would reduce the freshwater inflow to the Mattaponi River at Scotland Landing below the following values.

<u>Month</u>	<u>Minimum Instream Flowby Requirement @ Scotland Landing (MGD)</u>
January	329
February	423
March	434
April	347
May	206
June	115
July	115
August	114
September	114
October	114
November	125
December	231

If the permittee has implemented mandatory conservation measures, then the permittee shall be allowed to withdraw water from the Mattaponi River whenever the freshwater inflow to the Mattaponi River at Scotland Landing is above 197.6 million gallons per day from December 1st through May 31st and whenever the freshwater inflow to the Mattaponi River at Scotland Landing is above 98.8 million gallons per day from June 1st through November 30th. However, no withdrawal by the permittee shall reduce the freshwater inflow to the Mattaponi River at Scotland Landing to an amount less than 197.6 million gallons per day from December 1st through May 31st nor to an amount less than 98.8 million gallons per day from June 1st through November 30th.

6. No pumpage to Beaverdam Creek from King William Reservoir is allowed whenever water is flowing over the spillway of Diascund Reservoir Dam.
7. The permittee shall prepare an operations and maintenance (O&M) manual for DEQ approval that will specify the procedures, measurements and calculations that will be performed to ensure that the water withdrawal, transfer and release conditions B.1 through B.5 this permit are followed. The O&M manual shall include a section on quality assurance and quality control to ensure that measurements are precise and accurate. The O&M manual shall include a contingency section that specifies what measures will be taken if required or planned measurements cannot be taken for whatever reason. The O&M manual shall specify what procedures will be used to monitor the Mattaponi River at Beulahville gage to compute freshwater inflow to the Mattaponi River. The O&M manual shall develop a reporting form to be used to satisfy monitoring condition E.2. The O&M manual shall be submitted to DEQ for approval by December 22, 2003.
8. This permit may be modified if the Department of Environmental Quality determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use, the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to State Water Control Law Sections 62.1-242 through 253, during the term of the permit.

**C. Water Conservation Conditions**

1. The permittee shall prepare a drought water conservation plan for DEQ approval that describes what measures shall be taken to notify the general public when there is a need for voluntary water conservation measures, and what measures shall be taken, what type of water uses are prohibited during mandatory water conservation phases and by what means the mandatory water use restrictions shall be enforced. The drought conservation plan shall be submitted to DEQ for approval by December 22, 2003.
2. The permittee shall enact a voluntary drought water conservation plan whenever total system water supply storage falls below the following values. For the purposes of this permit System Water Supply Storage means the water supply storage in King William Reservoir plus the available water supply storage in Lee Hall, Harwoods Mill, Skiffs Creek, Little Creek, and Diascund Creek Reservoirs and in Chickahominy Lake. These values are listed below, and, for the record, combined, equal 18151 million gallons. For the purpose of this permit water supply storage in King William Reservoir is 9232 million gallons. Available water supply storage in the combined existing storage system is 8919 million gallons, broken down as follows.

Lee Hall Reservoir	584 million gallons
Diascund Creek Reservoir	2329 million gallons
Skiffs Creek Reservoir	151 million gallons
Harwoods Mill Reservoir	564 million gallons
Little Creek Reservoir	4935 million gallons
Chickahominy Lake	356 million gallons
Total Existing Water Supply	8919 million gallons

<u>Month</u>	<u>Conservation Trigger - System Water Supply Storage Remaining (per cent)</u>
Jan.	35
Feb.	48
Mar.	60
Apr.	77
May	88
June	92
July	88
Aug.	81
Sep.	66
Oct.	50
Nov.	35
Dec.	32

This condition and condition C.3 shall take effect only after King William Reservoir has been filled. The initial filling shall not automatically plunge the permittee into water conservation by virtue of the fact that total depleted system water supply storage increases dramatically when an empty King William Reservoir comes on line.

When total system water supply storage rises above the above values the permittee may rescind the call for voluntary conservation.

3. The permittee shall enact a mandatory drought water conservation plan whenever total system water supply storage falls below the following values.

Month	Conservation Trigger - System Water Supply Storage Remaining (per cent)
Jan.	24
Feb.	31
Mar.	41
Apr.	63
May	79
June	80
July	75
Aug.	65
Sep.	49
Oct.	30
Nov.	18
Dec.	19

When total system water supply storage rises above the above values the permittee may relax the mandatory conservation measures and implement the voluntary conservation measures.

4. The permittee may not wholesale water to areas or localities outside of its service area during times of mandatory conservation, unless those areas and localities have also imposed mandatory conservation measures on their customers.

**D. Development and Incorporation of Mitigation Plans and Conditions**

1. The permittee shall mitigate for the loss of 437 acres of nontidal vegetated wetlands and open water habitat by the successful creation or restoration of vegetated wetlands at a minimum of a 2:1 level of compensation.
2. The permittee shall submit a detailed final wetland mitigation plan for the required mitigation to DEQ for review and approval by December 22, 2003 and prior to any construction that would result in the destruction of existing wetlands and prior to wetland mitigation site construction. This plan must be approved by the Director of the Department of Environmental Quality.

The plan shall identify the boundaries of the properties where wetlands are to be restored, created, enhanced or preserved. The plan shall establish success criteria by which the successful creation or restoration of wetlands shall be evaluated. The success criteria shall establish specific targets with regard to plant coverage, types of plants, density and survival of planned woody species. The plan shall include a monitoring program by which the successful creation and restoration of wetlands can be evaluated. The plan shall include contingency provisions by which deficiencies in the creation and restoration of wetlands can be corrected.

Not sooner than twenty four months, nor later than eighteen months before the date of permit expiration the permittee shall submit a reissuance progress report which delineates the restored and created wetlands and compares the actual mitigation sites with their targeted design in terms of area and quality. If the restored and created wetlands are not meeting established goals in terms of areal coverage, quality and type of wetland, the reissuance progress report shall identify what remedial actions shall be taken to meet those preestablished goals or what actions shall be taken to develop new mitigation sites.

3. The permittee shall submit a detailed eco-monitoring plan by December 22, 2003. The eco-monitoring plan shall include provisions to identify the spawning and nursery grounds of the Mattaponi River used by anadromous fish. The eco-monitoring plan shall include provisions to monitor the vegetative composition and distribution of flora of the tidal wetlands of the Mattaponi River. The eco-monitoring plan

shall be designed with the intention of monitoring any salinity induced changes to the composition and distribution of the flora in the tidal wetland communities and any salinity induced changes to the location of spawning and nursery grounds used by anadromous fish. The eco-monitoring plan shall include provisions for monitoring the condition and viability of the Sensitive Joint Vetch colony at White Oak Landing on the south shore of the Mattaponi River.

4. By December 22, 2003 the permittee shall submit to DEQ for approval a salinity monitoring plan for the Mattaponi River. Prior to the development of the salinity monitoring plan the permittee shall perform multidimensional hydrodynamic salinity modeling to analyze short term and vertical variations in salinity in the Mattaponi River with the permitted intake in operation. The results of the multidimensional hydrodynamic salinity modeling shall be used to develop proposed salinity sampling stations and frequencies for sampling for the salinity monitoring plan. The plan shall specify the monitoring stations and frequencies of sampling of the Mattaponi River. The salinity monitoring plan shall propose a schedule for periodic updates of water withdrawal data to be used to run the model and periodic calibration and verification of model results.

The permittee is not required by this permit to duplicate existing monitoring programs and to the extent that existing monitoring programs can provide publicly owned data useful to this permit's purposes the permittee may make use of such data. However, the permittee's salinity monitoring plan will be required to makeup any shortcomings of existing salinity monitoring programs.

5. Prior to the submittal for approval of the salinity monitoring plan, the ecomonitoring plan and the wetland mitigation plan, the applicant shall provide public notice of the availability of the draft plans and shall accept comments for a period of no less than 45 days and shall conduct a public meeting to accept comments on the proposed wetland mitigation plan, the ecomonitoring plan and the salinity monitoring plan. Subsequent to this public participation process, the permittee shall review said plans in light of public comments and submit with any changes deemed warranted the monitoring plan or plans for approval by the Director. Completion of the public participation process does not guarantee approval by the Director. Upon approval by the Director of DEQ, the salinity monitoring plan, the ecomonitoring plan and the wetland mitigation plan shall be incorporated by reference as enforceable conditions of the permit.

6. The permittee shall cooperate with the Department of Game and Inland Fisheries to plan and restore anadromous fish passage to at least one currently blocked tributary in the York River Basin. The plan shall include cost sharing provisions. The permittee shall initially investigate the feasibility of restoring fish passage to the following three sites.

South Anna River  
Herring Creek  
Gravatt's Mill Pond

7. This permit may be modified to incorporate as permit conditions the provisions of the above anadromous fish restoration plans. Permit fees associated with permit modification shall be borne by the permittee. Furthermore the conditions of this permit may be modified should the ecomonitoring or salinity monitoring plan results document ecological problems attributable to the withdrawal of water from the Mattaponi River.

#### **E. Monitoring and Reporting Conditions**

1. The permittee shall install flow meters at a point along the pipeline between Scotland Landing and King William Reservoir and at a point along the pipeline between King William Dam and Beaverdam Creek and a water flow measurement device below the dam on Cohoke Creek to record the volume of water withdrawn, transferred and released each day. The meters and flow measurement devices shall be read and the volume of water withdrawn, transferred or released shall be recorded on a daily basis. Computerized, automatic record keeping is allowed in lieu of manual record keeping.
2. The permittee shall prepare an annual report to demonstrate compliance with special conditions B.1. through B.6. . The report shall contain the following information: for each measurement the date of the measurement and the following measurements: the stream flow of the Mattaponi River at Beulahville, the freshwater inflow of the Mattaponi River at Scotland Landing, the allowable volume of water that can be pumped from the Mattaponi River according to the conditions of this permit, the volume of water pumped from the Mattaponi River, the remaining water supply storage in Cohoke Creek, Diascund Creek, Little Creek, Skiffs Creek, Lee Hall and Harwoods Mill Reservoirs and in Chickahominy Lake, the volume of water withdrawn from the Mattaponi River, the volume of water transferred from King William Reservoir to Diascund Creek Reservoir and the volume of water released to Cohoke Creek from King William Reservoir.

For each day the report shall record the remaining water supply storage in King William Reservoir and in Newport News's existing six water supply reservoirs in terms of percent for the purpose of monitoring compliance with condition C.2 and C.3.

The report shall sum the amount of water transferred from King William Reservoir to Diascund Creek Reservoir on each day for the calendar year to provide a running 36 month total amount of water transferred for the purposes of monitoring compliance with condition B.3.

The report containing the information listed above shall be filed not later than January 31st covering the previous calendar year. No report need be submitted prior to the start of actual withdrawals. Violations of any water withdrawal, transfer or release condition shall be reported within one week following discovery by the permittee. The report shall be sent to the Department of Environmental Quality, Office of Permit Support, P. O. Box 10009, Richmond, Virginia 23240-1009.

3. Subsequent to completion of the dam, the permittee shall monitor for temperature, dissolved oxygen and pH at a location not less than 100 feet nor more than 500 feet below the release point from Cohoke Reservoir in Cohoke Creek for dissolved oxygen, temperature and pH. Measurements shall be taken once weekly for the months of July, August and September. Measurements shall be taken in the daytime between the hours of 9 AM and 5 PM and on the same day each week. Likewise, the permittee shall monitor at a similar location downstream of the release point of Beaverdam Creek for the same parameters at the same frequency, but not necessarily on the same day of the week.
4. Results of the monitoring shall be reported by January 31st for the previous calendar year. Violations of any water quality standard condition shall be reported within one week following discovery by the permittee. The report shall be sent to the Department of Environmental Quality, Office of Water Permit Support, P. O. Box 10009, Richmond, Virginia 23240-1009.



5. The permittee shall employ photographic monitoring to document the post project protection of the physical integrity of Beaverdam Creek channel. The photographic protocol shall include one set of photographs documenting baseline conditions, and one set of photographs taken annually subsequent to the beginning of discharges from King William Reservoir. Sets of photographs shall be taken in the same month each year, from the same stations and facing the same direction. Photographic stations shall be selected to best illustrate the condition of the Beaverdam Creek channel. A minimum of six shots shall be taken within the first 150 feet of the discharge point. Three other photo stations shall be selected, spaced evenly along Beaverdam Creek with each station showing an upstream and downstream view. Photographic albums shall be submitted to DEQ by January 31st for the previous calendar year. The albums shall contain photographs for the given year as well as any photographs taken in previous years during the term of the permit.

## PART II - GENERAL CONDITIONS

### A. Duty to Comply

The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permittee of the duty to comply with all applicable Federal and State statutes, regulations and toxic standards and prohibitions. Any permit non-compliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

### B. Mitigation Requirements

The permittee shall take all reasonable steps to:

1. Avoid all adverse environmental impact which could result from the activity;
2. Where avoidance is impractical, minimize the adverse environmental impact; and
3. Where impacts cannot be avoided, provide mitigation of the adverse impact on an in kind basis.

### C. Reopener

This permit may be reopened to modify the conditions of the permit to meet new regulatory standards duly adopted by the Board. Causes for reopening permits include, but are not limited to:

1. When State law prohibits conditions in a permit which are more stringent than an applicable effluent limitation guideline;
2. When subsequently promulgated effluent guidelines are modified, and are based on best conventional pollutant control technology; or
3. When the circumstances on which the previous permit was based have materially and substantially changed, or special studies conducted by the Department or the permittee show material and substantial change since the time the permit was issued and thereby constitute cause for permit modification or revocation and reissuance.

D. Change in Management of Pollutants

All discharges and other activities authorized by this permit shall be made in accordance with the terms and conditions of this permit. The permittee shall submit a new application 180 days prior to any proposed modification to their activity which will:

1. Result in a significantly new or substantially increased discharge of dredged or fill material, or a significant change in the nature of the pollutants; or
2. Violate or lead to the violation of the terms and conditions of the permit or the Water Quality Standards of the Commonwealth.

E. Duty to Halt or to Reduce Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

F. Compliance with State and Federal Law

Compliance with this permit constitutes compliance with the Virginia Water Protection Permit requirements of the State Water Control Law. Nothing in this permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other State law or regulation or under the authority preserved by Section 510 of the Clean Water Act.

G. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

H. Severability

The provisions of this permit are severable.

### I. Right of Entry

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

### J. Transferability of Permits

This permit may be transferred to another person by a permittee if:

1. The current permittee notifies the Department of Environmental Quality 30 days prior to the proposed transfer of the title to the facility or property;
2. The notice of the proposed transfer includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and
3. The Department of Environmental Quality does not within the 30 day time period notify the existing permittee of the State Water Control Board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

**K. Permit Modification**

The permittee shall notify the Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the Department that said modification will not violate any conditions of this permit. If such demonstration cannot be made, the permittee shall apply for a modification of this permit. This permit may be modified when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of permit conditions that differ from those of the existing permit or are absent from it;
2. When new information becomes available about the operation or discharge covered by the permit which was not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance;
3. When a change is made in the promulgated standards or regulations on which the permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Clean Water Act;
5. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act;
6. When changes occur which are subject to "reopener clauses" in the permit;
7. When the level of discharge of a pollutant not limited in the permit exceeds the level which can be achieved by available methodology for controlling such discharges;
8. When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application; or
9. When other states were not notified of the change in the permit and their waters may be affected by the discharge.

**L. Permit Termination**

This permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the permit;
2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by permit modification or termination; or
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge of dredged and fill material controlled by the permit.

**M. Civil and Criminal Liability**

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

**N. Oil and Hazardous Substance Liability**

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

**O. Unauthorized Discharge of Pollutants**

Except in compliance with this permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or,
2. Otherwise alter the physical, chemical, or biological properties of such state surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.



**FINAL  
MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES ARMY CORPS OF ENGINEERS,  
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
for  
TREATMENT OF ADVERSE EFFECTS TO HISTORIC PROPERTIES AFFECTED BY  
THE CONSTRUCTION AND DEVELOPMENT OF THE KING WILLIAM RESERVOIR,  
KING WILLIAM COUNTY, VIRGINIA**

**June 21, 2005**

WHEREAS, pursuant to Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers ("the Corps"), is reviewing a permit application submitted by the City of Newport News ("the City") for development of the proposed King William Reservoir ("KWR" or "the undertaking"), as described in the *Final Environmental Impact Statement, Regional Raw Water Study Group Lower Virginia Peninsula Regional Water Study Plan Main Report*, issued by the U.S. Army Corps of Engineers, Norfolk District, in 1997, an undertaking that includes the proposed reservoir, an intake on the Mattaponi River, a pipeline from the Mattaponi River to the reservoir, a pipeline from the reservoir to the Diascund Reservoir, all lands and easements to be acquired for the reservoir and for purposes of compensatory wetland mitigation and other aquatic purposes, and all permanent and temporary facilities associated with construction and operation of the reservoir and wetland mitigation areas; and

WHEREAS, pursuant to 36 CFR § 800.5 and 33 CFR § 325 Appendix C, the Corps has determined that issuing a Department of the Army permit to the City to implement the KWR will have adverse effects on properties included in or eligible for the National Register of Historic Places, by allowing such properties to be flooded, disturbed by construction, or otherwise modified, and by causing changes to culturally valued aspects of the natural environment; and

WHEREAS, pursuant to 36 CFR § 800.6, the Corps has consulted with the City, the Virginia Department of Historic Resources, acting as the State Historic Preservation Officer ("SHPO"), the Advisory Council on Historic Preservation ("ACHP"), and the Pamunkey, Mattaponi, and Upper Mattaponi Indian Tribes ("the Tribes") about how to resolve such adverse effects; and

WHEREAS, as part of review under the National Environmental Policy Act, the Corps has informed the public of the proposed KWR through public notices, a public hearing, and through review and comment on the Draft Environmental Impact Statement (February 1994), the Supplement to the Draft Environmental Impact Statement (December 1995) and the Final Environmental Impact Statement (January 1997); and

WHEREAS, the Corps, in consultation with the City and SHPO, has invited the following parties to consult on and concur in this Memorandum of Agreement ("MOA"):

- The City of Newport News;
- The Pamunkey Indian Tribe;
- The Mattaponi Indian Tribe;
- The Upper Mattaponi Indian Tribe;
- APVA Preservation Virginia;
- The National Trust for Historic Preservation;
- King William County;
- The U.S. Environmental Protection Agency; and

WHEREAS, SHPO has expressed concern for the impacts of the project on the daily lives and cultural heritage of the Virginia Tribes and the current lack of concrete and definitive mitigation measures regarding properties of traditional religious and cultural importance (henceforth "Traditional Cultural Properties" or "TCPs"); nevertheless, SHPO has participated in consultation and has agreed to be a signatory to this MOA in accordance with 36 CFR § 800.6(b)(2) in order to ensure the appropriate treatment of the Commonwealth's cultural resources, and to ensure, in particular, appropriate treatment of TCPs and the development of meaningful TCP mitigation pursuant to the terms of this MOA should the Corps issue a permit for the undertaking; and

WHEREAS, the Tribes, although opposed to the KWR and convinced that its impacts cannot be fully mitigated, have participated in consultation in order to ensure the best possible mitigation of impacts on their cultural values should the Corps issue a permit for the undertaking; and

WHEREAS, the National Trust for Historic Preservation, although opposed to the KWR and convinced that its impacts cannot be fully mitigated, has participated in consultation in order to ensure the best possible mitigation of impacts should the Corps issue a permit for the undertaking; and

WHEREAS, the U.S. Environmental Protection Agency has participated in consultation to support and assist the Corps in compliance with Executive Order 12898 to ensure that Environmental Justice issues have been fully considered in review of the undertaking; and

WHEREAS, each of the parties listed above, plus SHPO and ACHP, shall be considered a Consulting Party for purposes of this MOA unless that party's duly authorized representative requests in writing that it not be so considered. Others may become Consulting Parties at the discretion of the Corps after consultation with SHPO and ACHP; and

WHEREAS, the Corps has established the area of potential effects of the undertaking, as defined in 36 CFR § 800.16 (d), to include the Mattaponi River from the site of the proposed intake structure to its mouth, the Pamunkey Neck, and all wetland mitigation sites and other sites subject to modification for aquatic purposes, as shown on the map

entitled "Area of Potential Effects, King William Reservoir Project," and dated July 2004 and attached hereto as Attachment 1; and also 3 additional maps: "Wetland Mitigation Sites, July 2004" (Attachment 2); "KWR Cultural Resource Map Project Area, May 21, 2004" (Attachment 3) and "KWR Cultural Resource Map, King William Reservoir Pool, May 21, 2004" (Attachment 4); and

WHEREAS, studies within the area of potential effect sponsored by the City and the Corps, including architectural and archaeological surveys reported in the *Phase 1A Cultural Resources Survey for the Black Creek and Cohoke Millcreek Reservoir Alternatives* (Mid-Atlantic Archaeological Resources Associates, Inc.) and *Phase I Cultural Resource Survey for the Proposed King William Reservoir, King William County, Virginia and A Background Review, Architectural Review, and Archeological Reconnaissance for the Proposed Black Creek Reservoir, New Kent County, Virginia*, (3 Volumes; Mid-Atlantic Archaeological Resources Associates, Inc. October 1996; hereinafter, "the MAAR report") and in *Powhatan's Legacy: Traditional Cultural Property Study For The Proposed Water Supply Reservoir, King William County, Virginia*, dated October 31, 1998 ("Powhatan's Legacy"), have identified archaeological sites and traditional cultural properties that the Corps and SHPO have agreed to regard collectively as eligible for the National Register of Historic Places for the purposes of this undertaking; and

WHEREAS, the City has participated in consultation as the representative of the Regional Raw Water Study Group and is the permittee or applicant of record for all permits required for the King William Reservoir Project. The City is the invited signatory and is responsible for carrying out actions assigned to it by the Corps pursuant to this agreement;

NOW, THEREFORE, the Corps, SHPO, and ACHP agree that if the Corps approves a permit for the KWR, the Corps will ensure that the City's adherence to its obligations under this MOA is a condition of such permit in order to take into account its effects on historic properties.

## **STIPULATIONS**

(NOTE: Unless otherwise noted, timeframe specified in this Memorandum of Agreement will be measured in calendar days.)

The Corps will ensure that the following measures are carried out:

### **I. IDENTIFICATION AND TREATMENT OF ARCHAEOLOGICAL SITES, HISTORIC BUILDINGS AND STRUCTURES, AND HISTORIC LANDSCAPES**

The Corps shall ensure that a suitably qualified archaeologist working under its direction is assigned to serve as the primary point of contact for this effort. This person will provide general oversight on cultural issues and conduct the initial review of documents on behalf of the Corps. The selected archaeologist shall meet the *Secretary of Interior's Professional Qualifications Standards* (62 FR 33707, June 20, 1997), have experience in the application of Section 106

of the National Historic Preservation Act (as amended) and its implementing regulations, and have experience in archaeology of the mid-Atlantic Region. The Corps reserves the right to exercise its contractual authority as necessary to retain the services of a suitably qualified archaeologist. The Corps also retains its discretion to require that the City cover the costs of retaining the archaeologist, and for all project-related compliance and enforcement costs encumbered by the Corps of Engineers.

A. Identified Archaeological Sites

1. For the purposes of this MOA, all archaeological sites identified in the MAAR report that will be acquired or in any way affected by the KWR will be regarded as individually eligible or as contributing components to a historic district eligible for the National Register of Historic Places under 36 CFR § 60.4 Criteria A and D, without regard for the MAAR report's recommendations about eligibility, and shall be treated by the City in accordance with Treatment Plans to be developed under the guidance of the Corps and implemented by the City in coordination with the Consulting parties, pursuant to Stipulation I.A. 2. below.
2. Archaeological site Treatment Plans shall be developed by the City and shall
  - a. Take into account the fact that archaeological sites associated with Tribal history and culture are regarded as Traditional Cultural Properties, and be coordinated with Traditional Cultural Property Mitigation Programs developed pursuant to Stipulation III;
  - b. With respect to sites associated with Native American occupation and use of the area, regardless of age, be developed in full consultation with the Tribes, to the extent the Tribes are willing to participate;
  - c. To the maximum extent practicable, give deference to the wishes of the Tribes regarding treatment of archaeological sites and their contents;
  - d. Wherever practicable, provide for the preservation of archaeological sites in place, with as little change as possible, and include provisions for long-term management, which may include co-management with or management by one or more of the Tribes;
  - e. Where necessary to preserve such sites, provide for such management actions as physical stabilization, planting, and fencing;
  - f. Where flooding or other physical disturbance is unavoidable, set forth provisions for archaeological data recovery including at least the following elements:
    - i. Information on each archaeological site or group of related sites where data recovery is to be carried out;

- ii. Identification of research questions to be addressed through data recovery, including research questions that *are important to the Virginia native population*, with explanation and justification of their relevance and importance;
- iii. Discussion of any non-research justifications for data recovery or for not pursuing data recovery;
- iv. Where necessary to determine the site's or site-group's character or significance, procedures for preliminary site testing and for review by the parties to this MOA of testing results and plans for data recovery (if any);
- v. Where data recovery is proposed, description of methods to be used, with explanation of their pertinence to research questions or other rationale for their employment;
- vi. Detailed arrangements for keeping the Signatories and Tribes fully informed of, and providing the Tribes full opportunity to monitor or take part in all operations affecting historic properties of religious and cultural significance to the Tribes, including provisions of reasonable compensation for Tribal monitoring;
- vii. Arrangements for voluntary participation in archaeological and historical research by other interested members of the public, including but not limited to local historical organizations, consistent with the provisions of Stipulation I.D.1, and for the dissemination of public information about the results of archaeological and historical research, to the extent such participation and dissemination do not conflict with Tribal interests in protecting their cultural heritage, in accordance with Section 304 of the National Historic Preservation Act. The Corps shall make the final decision if there is a disagreement;
- viii. Arrangements for regular progress reports to keep the Corps, SHPO, the Tribes and other Consulting Parties up to date on the work;
- ix. A proposed timetable for testing, excavation, analysis, and preparation of technical reports and other publications.
- x. Where human remains may be unearthed, the information and assurances required by the Virginia Department of Historic Resources Director for issuance of a permit under Virginia Code 10.1-2305(A), and assurances that any such remains will be treated with dignity and respect in accordance with Stipulations II.D & E.

3. The Corps will have 15 days to perform an initial review of Treatment Plans. Following initial review by the Corps, the City shall provide each Treatment Plan to SHPO, ACHP, the Tribes, and all other Consulting parties, specifying a review and comment period of at least thirty (30) days.
4. Comments on each Treatment Plan shall be submitted to the Corps. Any Consulting party may request in writing to the Corps an extension of the review period for up to an additional 30 days, which the Corps shall grant unless it determines there are urgent reasons to do otherwise.
5. The Corps will meet with SHPO, the Tribes, ACHP, the City and other Consulting parties as needed to resolve questions about or objections to a Treatment Plan, subject to Stipulation VI.A .
6. Upon resolving questions or objections (if any) or complying with Stipulation VI.A, the Corps shall approve or disapprove each Treatment Plan.
7. The City shall implement each Treatment Plan upon its approval by the Corps, and revise and resubmit each disapproved Treatment Plan.
8. If the anticipated impacts change, the City shall propose revisions to the applicable Treatment Plan. Revised Treatment Plans shall be processed in accordance with paragraphs 2 through 7 above.
9. The City shall notify the Corps, SHPO, ACHP, Tribes and all Consulting Parties in writing at least seven (7) days prior to the commencement of fieldwork, and shall notify them in writing again once the fieldwork portion of any data recovery is complete. Site visits shall be scheduled within a reasonable time upon the request of the Tribes, ACHP or SHPO. Upon written approval by the Corps, the proposed construction may proceed, while any final technical reports provided for in the Treatment Plan are in preparation.
10. Funding shall be contributed by the City to an impartial organization identified by the Corps with the concurrence of the affected Tribe(s), including the Rappahannock Tribe, for the purpose of providing expert archaeological assistance to each affected Tribe during the development and implementation of Treatment Plans. For each Tribe requesting assistance under this stipulation, the impartial organization will retain a contractor to be selected by the Tribes from a list of qualified contractors (i.e., those who meet the professional qualification standards of the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* [48 FR 44716, September 29, 1983, rev. 2000], and who have Native American archaeological experience) developed by the impartial organization in consultation with the Tribe. This expert assistance shall be available to a Tribe until all Treatment Plans have been developed and fully implemented. Any work performed by the contractor for the Tribe shall remain confidential as between the Tribe and contractor, subject only to the Tribe's decision to disclose any such work. The City will compensate the impartial organization for the cost of this Tribal assistance up to an amount authorized by the City's

governing body. (This provision shall be subject to the appropriation of funds by the City's governing body.) Should the amount of funding authorized for the assistance to a Tribe be exhausted before all Treatment Plans have been developed and fully implemented, the Corps, upon reviewing the progress made to date and after consultation with SHPO and ACHP, shall establish an amount of additional funding to be contributed by the City for this purpose. In the event that the City fails to provide adequate funding for this expert assistance, the Corps shall exercise its authority under 33 CFR § 325.7, notwithstanding any other provision of this MOA.

**B. Further Identification and Evaluation of Archeological Sites, Buildings, Structures and Landscapes**

1. In consultation with the Corps, the City will complete surveys of wetland mitigation areas, streambank restoration areas, construction areas that have not previously been surveyed (such as haul roads, pipeline rights of way and staging areas), and other areas that may be acquired or subjected to physical impact, as identified by the Corps in consultation with SHPO, the Tribes, ACHP and other Consulting Parties, to identify additional archaeological sites and/or buildings, structures, or landscapes that may be eligible for the National Register of Historic Places. The City shall complete its survey at a particular location prior to the commencement of construction-related activities there. The City shall consult with the Tribes and SHPO when planning and conducting survey work, and provide the Tribes with every reasonable opportunity to participate in such work.

- a. The City shall ensure that any additional field investigations at the locations cited in Stipulation B.1. above and resulting technical reports shall meet the specifications of the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation*; and SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia* (1999, rev. 2001), and shall include the development of a research design, discussion of methodology, and any applicable planning documents.

- b. The Corps shall ensure that identification surveys shall be conducted in accordance with 36 CFR § 800.4 (a) and (b). SHPO, the Tribes, ACHP, and other Consulting Parties shall be afforded an opportunity to review and comment on all research designs, methodology, and planning documents prepared in advance of and as part of completion of these surveys.

- c. The Corps shall evaluate the historic significance of any newly identified property in accordance with 36 CFR § 800.4 (c). Following an initial review of the City's submittal by the Corps not to exceed fifteen (15) days, SHPO, the Tribes and other Consulting Parties shall be afforded an opportunity to review and comment on all research designs, methodology, and planning documents prepared in advance of and as part of completion of these evaluations. The Corps and SHPO may either



agree to regard a newly identified property or group of properties as eligible for the National Register of Historic Places, or resolve eligibility by following 36 CFR § 800.4 (c)(2). *Agreement that a newly identified property is eligible for the National Register of Historic Places shall not negate the need for additional identification and evaluation surveys or for Treatment Plans.*

d. Consultation shall include review of potential wetland mitigation site engineering design and methods in order to assess ways to avoid or minimize impacts to historic properties.

2. As outlined in 36 CFR § 800.3(f), additional Consulting Parties may be identified and the Corps may invite them to participate in the Section 106 process. The Corps shall offer the Rappahannock Tribe the opportunity to participate in the consultation process involving properties in which they have a cultural interest including but not limited to the proposed Terrell Wetland Mitigation Site.

#### C. Treatment of Newly Identified Archaeological Sites, Buildings, Structures and Landscapes

1. The Corps shall ensure that each property or group of properties identified pursuant to Stipulation I.B.1.a and regarded as, or determined to be, eligible for listing in the National Register of Historic Places pursuant to Stipulation I.B.1.c is addressed through development and implementation of a Treatment Plan. Treatment Plans for archaeological sites shall be developed and implemented in accordance with Stipulation I.A.2-10. Treatment Plans for historic buildings, structures, and landscapes shall be prepared in consultation with SHPO and other Consulting Parties and shall take into account applicable guidance identified by SHPO. Preservation in place and adaptive use shall be given preference in the development of Treatment Plans for such properties, with relocation and adaptive use of buildings and structures considered where preservation in place is infeasible. Recordation is to be conducted in all cases, and Treatment Plans shall provide for long-term property management.
2. The Corps shall ensure the treatment of archaeological sites is coordinated with the Tribes, and:
  - a. Coordinated with all Consulting Parties in such a way as to ensure that they are routinely informed of ongoing and planned activities and afforded a reasonable opportunity to review and participate in consultation on ways to treat historic properties; and
  - b. Where such sites represent the activities of Native Americans, coordinated with the Tribes, and that members of such Tribes are given every reasonable opportunity to participate in the work, both as paid members of the project teams and as volunteers, in accordance with plans developed by the City.

Such coordination will, presumably, assist in identifying possible TCPs of importance to a Tribe or Tribes.

**D. General Provisions**

1. The City shall provide for security during all phases of archaeological investigation to protect resources from vandalism and looting. The City will take all necessary precautions to ensure the security of all on-site equipment, artifacts, personnel, and property. All storage and laboratory facilities and field vehicles shall be securely locked after regular work hours. Access to any on-going archaeological excavation shall be limited to field personnel and authorized individuals only. Authorization for field visits by non-staff persons shall be coordinated through the archaeological field director or principal investigator.
2. The City will ensure that any areas disturbed as a result of archaeological investigations are restored to pre-project conditions should the undertaking not go forward or should it be modified in such a way as to leave excavated areas unaffected by the undertaking.
3. It is understood by all parties that archaeological excavations that may unearth human remains are subject to the permitting requirements of Virginia Code 10.1-2305(A) as applicable. The Corps and City will ensure that archaeological work carried out under the terms of this MOA is consistent with the terms of permits issued by the Virginia Department of Historic Resources Director, and the Virginia Department of Historic Resources will ensure that its review of permit requests is coordinated with review pursuant to this MOA.

**II. TREATMENT OF POST REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS ON HISTORIC PROPERTIES**

- A. In the event that unanticipated physical effects occur on historic properties or that evidence is discovered in the course of the undertaking suggesting the presence of previously unidentified historic properties, human remains, or items of possible historic or cultural importance, the City shall halt any and all construction or other work affecting such property or discovery and shall notify the Corps, SHPO, and the Tribes immediately in accordance with 36 CFR § 800.13.
- B. The Corps may assume the eligibility of properties identified under Stipulation II.A for the National Register of Historic Places, and shall consult with SHPO to resolve any questions about eligibility, as well as with the Tribes, where properties are related to Native American history and culture. The Corps' assumption of eligibility of discovered properties shall not negate the need for additional identification or evaluation investigations to support a Treatment Plan.
- C. Conferring with the Corps, the City will develop and implement Treatment Plans for properties identified under Stipulation II.A in consultation with SHPO and Tribes. The Corps, SHPO, Tribes and other consulting parties shall have 30 days from

receipt to review and comment on the draft Treatment Plan. If SHPO fails to respond, the Corps may assume concurrence and implement the Treatment Plan. The City shall then recommence construction or other work affecting the property only in a manner consistent with such Treatment Plans.

- D. To facilitate the management of discoveries, where an identified archaeological site or any location thought likely to be archeologically, historically, or culturally significant despite a lack of definitive evidence of such significance will be physically affected by construction or other ground-disturbing activities, the Corps shall ensure that the City provides for monitoring of all activities likely to disturb such site by one or more archeologists and one or more representatives of the Tribes. The Tribal monitor(s) and archaeologist(s) may be the same individual(s) if the City and Tribes so agree. The City shall compensate the Tribes for the reasonable costs of any such tribal monitoring. The City may also be financially responsible for monitoring by an archaeologist on behalf of a Tribe in accordance with Stipulation I.A.10.
- E. In the event a burial site, human remains, or artifacts indicative of the presence of human remains are discovered during the implementation of this MOA, the City shall immediately notify the Corps, the Tribes, and SHPO of the discovery, and shall cease all work that might affect the discovered site while a determination is made as to whether the burial site, human remains, and/or artifacts indicate a Native American burial, and if so, whether it is feasible to avoid such site, remains, and/or artifacts by altering the design of specific elements of the KWR project. This determination shall be made by the Corps in consultation with the Tribes, the City, and SHPO, and its decision shall be communicated promptly to the Tribes, the City, and SHPO. The provisions of Stipulation VI.A (Dispute Resolution) shall apply. Under the guidance of the Corps, specific project elements will be redesigned to avoid any such burial site, human remains, or associated artifacts unless the costs, loss of time, and impact on project yield make such redesign unreasonable after giving great weight to the cultural and/or scientific importance of the site, burial remains, and/or associated artifacts.
  - i. Burial sites, human remains, and associated artifacts shall be handled with respect from the time they are discovered until the applicable Treatment Plan has been fully implemented. Furthermore, any Treatment Plan for the treatment of human remains shall conform to the following: Regarding repatriation, The Native American Graves Protection and Repatriation Act, regardless of anything in this MOA that may be contrary to such law.
  - ii. Excavation of human remains and associated objects shall be carried out in accordance with the greatest possible care and precision, ensuring that the physical integrity and orientation of the grave and its contents are respected.
  - iii. The general public shall not be invited to view any Native American burial site, human remains, or artifacts associated with such remains.

Such physical viewing includes photographs or other documentary means.

- iv. Native American human skeletal remains and associated artifacts shall be reinterred in the manner and at the location agreed upon by the affected Tribe. In the case of disagreement between the Tribes, the Corps shall make the final decision on reinterment.
- v. If human skeletal remains and associated artifacts are associated with the Rappahannock Tribe, they shall be reinterred in the manner and at the location agreed upon by the Rappahannock Tribe.

### III. TRADITIONAL CULTURAL PROPERTIES

- A. Impacts on TCPs, including those identified and documented in *Powhatan's Legacy*, shall be addressed in accordance with TCP Mitigation Programs negotiated between the City and the Tribes and approved by the Corps, the Tribes negotiating individually or together at their discretion. In accordance with Stipulation III.C. below, the Corps' decision is final if there is a disagreement among the Tribes that cannot be resolved.
- B. Should the Corps and City determine that the sites known as "the Island" and the "Rice property," which are identified and described in the *King William Reservoir Project Reservoir Mitigation Plan* (June 2004), may be used for purposes of wetland mitigation, the City will expedite negotiations with the Tribes with the goal of establishing a TCP Mitigation Program that may include but is not limited to restoration and preservation of the natural setting of these sites in ways that protect any cultural values ascribed to either or both of them by the Tribes in addition to provisions for access and use by the Tribes for special events and traditional cultural activities, such as cultural ceremonies, hunting and fishing.
- C. TCP Mitigation Programs agreed upon by the City and one or more Tribes shall be presented to the Corps for its approval or disapproval following consultation with SHPO and ACHP. The Corps shall approve any such TCP Mitigation Program unless it violates an applicable statute, regulation, or public policy, and approval shall not be unreasonably withheld. Unless the Corps advises the City and the Tribe(s) that a longer period of time will be required for its review, the Corps will, immediately upon receipt of a TCP Mitigation Program being presented, provide it to SHPO and ACHP for their review. SHPO and ACHP shall provide their comments to the Corps within 20 days. The Corps will then render its final approval/disapproval decision within 10 days of receipt of the SHPO and ACHP comments. Should the Corps disapprove a TCP Mitigation Program, the Corps will specify in writing the reason(s) for its disapproval.
- D. If the City and a Tribe cannot reach agreement on a TCP Mitigation Program, together the Corps, SHPO and ACHP shall consult with the Tribe and the City to attempt to reach an agreement. After such consultation, should the Corps determine that agreement appears unlikely, the Corps shall ask the City to submit the City's best and final TCP Mitigation Program proposal. Unless the Corps advises the City and Tribe(s) that a longer period of time will be required

for its review (including consultation with the pertinent Tribe or Tribes on the reasonableness of the City's proposal), the Corps will, immediately upon receipt of the City's proposal and Tribal comments thereon, provide the proposal to SHPO and ACHP, who shall then provide the Corps with their opinion within twenty (20) days. The Corps shall then take into account such opinions and make a binding decision on whether to approve or disapprove the City's proposal within ten (10) days. The Corps' decision shall be based upon the general principles of public interest review outlined at 33 CFR 320.4 (a), and shall not be subject to Stipulation VI.A. Should the Corps disapprove a TCP Mitigation Program, the Corps will specify in writing the reasons for its disapproval.

- E. Where the Corps disapproves a TCP Mitigation Program, the City may revise and resubmit such proposed TCP Mitigation Program, or propose a new TCP Mitigation Program, in accordance with Stipulations III A and C above.
- F. Elements of TCP Mitigation Programs for which the City shall be financially responsible may include, but are not limited to: financing reasonable, impact related cultural, educational and Tribal community activities; compensation; education and training; access to project lands; cooperative monitoring of the undertaking's effects; and tribal management or co-management of places having particular cultural importance to one or more of the Tribes.
- G. The City shall ensure that commitments it makes in an approved TCP Mitigation Program are implemented.
- H. In conducting surveys pursuant to Stipulation I.B above, the City shall consult with the Tribes to identify possible TCPs of importance to a Tribe or Tribes, and will negotiate, obtain approval of, and implement TCP Mitigation Programs in accordance with Stipulations III.A through C above.
- I. To the extent permitted by law (including but not limited to Section 304 of the National Historic Preservation Act), the City, the Corps, SHPO, and ACHP shall respect the wishes of the Tribes regarding the confidentiality of TCP Mitigation Programs.
- J. Funding shall be contributed by the City to an impartial organization identified by the Corps with the concurrence of the Tribe(s) for the purpose of providing expert assistance to each affected Tribe during the development of the TCP Mitigation Programs described in Stipulation III.A above. For each affected Tribe requesting such assistance, an impartial organization will retain a contractor to be selected by the Tribe from a list of qualified contractors (i.e. those who meet the professional qualification standards of the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation*, who have experience in Section 106 of the National Historic Preservation Act, and who have Native American archaeological experience) designated by the impartial organization. This expert assistance shall be available to a Tribe until a TCP Mitigation Program is approved by the Corps for that Tribe. Any work performed by the contractor for the Tribe shall remain confidential as between the Tribe and the contractor, subject only to the Tribe's decision to disclose any such work. The City will compensate the impartial organization for the

reasonable cost of this Tribal assistance. Should the amount of funding authorized for the assistance to a Tribe be exhausted before that TCP Mitigation Program is approved, the Corps, upon reviewing the progress made to date and after consultation with the SHPO and ACHP shall establish an amount of additional funding to be contributed by the City for this purpose.

#### IV. REPORTS

- A. The City shall ensure that all reports describing actions carried out pursuant to this MOA and the results of such actions (including progress reports and final reports of property treatment, but not including Treatment Plans and descriptions of TCP Mitigation Programs, whose submission and review is specified in Stipulations I and III respectively) are submitted in draft to the Corps for review and comment.
- B. Following review by the Corps not to exceed fifteen (15) days, the City shall provide copies to all Consulting Parties unless a party has specifically advised in writing that it need not be provided a copy or copies. The Corps shall invite all parties to comment on the report(s).
- C. In its submission, the City will propose a review period for the report, no such period to be less than thirty (30) days.
- D. The Corps may either accept the proposed review period or direct that it be modified, in which case the City shall modify the review period accordingly. The Corps will receive comments on the report within the review period, and may extend the review period by agreement with one or more Consulting Parties.
- E. The Corps shall ensure that draft reports are modified to respond to comments, subject to Stipulation VI.A below in the event of a dispute, and that copies of final reports are provided to all Consulting Parties that have not advised in writing that they need not receive copies. Failure of a recipient of a report to comment on a report within the specified review period shall not preclude the City from finalizing the report and proceeding on the basis of its conclusions or recommendations, if any.
- F. All draft and final reports submitted to SHPO shall be in two copies, in spiral binding on acid-free paper.
- G. All archaeological reports, including data recovery plans included in Treatment Plans, shall be consistent with the *Secretary of Interior's Standards for Archaeological Documentation* (48 FR 44734-37, September 29, 1983) and the professional standards set forth in SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia* (1999, rev. 2001), and shall take into account ACHP's publication, *Consulting About Archaeology Under Section 106* (1990).
- H. All historical and architectural reports shall be consistent with pertinent standards and guidelines of the Secretary of the Interior, including as applicable the *Secretary of the Interior's Standards for Historical Documentation* (48 FR 44728-

## V. TREATMENT OF RECORDS, ARTIFACTS, AND OTHER CULTURAL MATERIAL

- A. The Corps shall ensure that all field and research notes and records, maps, drawings and photographic records produced or collected in connection with the undertaking, will be permanently curated at the Virginia Department of Historic Resources. Virginia Department of Historic Resources agrees to maintain such records in accordance with 36 CFR § 79, *Curation of Federally Owned and Administered Archaeological Collections*.
- B. Both before and after field work begins, the City shall make every reasonable effort to acquire the legal title to artifacts and other physical materials recovered from private land used for the undertaking that the City does not acquire in fee simple, other than human remains and other funerary objects. If the City is unable to acquire legal title to such artifacts or other physical materials, it will make every reasonable effort to ensure that they are offered to the Virginia Department of Historic Resources for curation in accordance with 36 CFR § 79. The City's responsibilities under this paragraph apply both to those artifacts and physical materials that are associated with Native American history or culture and to those that are not.
- C. The City agrees to assume the reasonable financial responsibility for the curation of artifacts or other physical materials that are not associated with Native American history or culture. The City shall ensure that such curation meets the terms and conditions of 36 CFR § 79. The City's responsibility includes those artifacts and other physical materials recovered from land owned by the City or from private lands whose owners have agreed to transfer such artifacts to the City, in accordance with Stipulation V.B. The City agrees to ask the Virginia Department of Historic Resources to provide permanent curation for these artifacts and materials. Virginia Department of Historic Resources agrees to curate the recovered materials at the established fee schedule, subject to space and other requirements. If Virginia Department of Historic Resources cannot provide curation, SHPO shall provide reasonable assistance to the City and the Corps in locating another repository that meets the requirements of 36 CFR § 79.
- D. In recognition of the fact that the Tribes regard any artifacts or other physical materials associated with their history and/or culture found within the undertaking's Area of Effect as part of their cultural patrimony, the City shall offer permanent possession of such artifacts or other physical materials to the Tribes after any analysis called for in the applicable Treatment Plan is complete, together with copies of all documentation pertaining thereto. The City agrees to use its best efforts to prevail upon the owners of those lands not owned or acquired by the City to offer recovered artifacts and physical materials to the Tribes. A Tribe may choose to accept possession and assume the responsibility for artifacts and materials and so inform the Corps, the City and SHPO or to



accept possession but a Tribe may request the Virginia Department of Historic Resources to provide curation in accordance with 36 CFR § 79. In either circumstance, the City will be financially responsible for the costs of curation. If the Tribe(s) choose to curate artifacts and materials themselves, the City will pay the Tribe(s) a curation fee in the same amount that it would have paid Virginia Department of Historic Resources to curate the same materials. If a tribe requests that Virginia Department of Historic Resources provide curation, and Virginia Department of Historic Resources is able to do so, the City will execute a curation agreement in consultation with the Tribe and in accordance with the standard VDHR fee schedule. If Virginia Department of Historic Resources cannot provide curation when requested, SHPO agrees to provide reasonable assistance to the Tribe, the City and the Corps in locating another repository that meets the requirements of 36 CFR § 79. The conditions of any curation agreement shall include, but not be limited to, temporary or permanent return of the artifacts and other materials to the Tribe when so requested.

- E. The Tribes are expected to decide among themselves which Tribe or Tribes will receive artifacts and/or other material. In case of disagreement between the Tribes, the Corps shall make the final decision regarding receipt of artifacts and/or other material.
- F. Should any party to this MOA propose to display, or allow the display of, Native American data or artifacts associated with implementation of this project for public viewing, that party will first consult with the Tribes. Any displays proposed by non-Tribal parties using artifacts and data from the work conducted under this MOA will be developed through consultation among the Tribes, the City, and SHPO. If any Tribe objects to the display of particular artifacts or data, or the manner in which these items are displayed, to the extent allowed by applicable law such items or display shall be removed.
- G. Where the City does not acquire an affected site in fee simple, it will attempt through agreement with the site's owner to ensure that artifacts, and other materials removed from such site are managed in accordance with this section.
- H. The City will be responsible for all reasonable costs associated with curation and necessary conservation. The City will also be responsible for all reasonable costs associated with reconstruction and other preparation of selected Native American artifacts for Tribal display purposes.
- I. With regard to repatriation, nothing in this MOA is intended to, nor shall, contravene the requirements of the federal Native American Graves Protection and Repatriation Act, when applicable.
- J. Any newly identified Consulting parties, such as the Rappahannock Tribe, shall be afforded the opportunity to receive artifacts and other materials relating to their cultural interests in accordance with Stipulation V. C through F above.

## VI. ADMINISTRATIVE STIPULATIONS

### A. Dispute Resolution

1. Should any Consulting Party object in writing to the Corps regarding any action carried out or proposed with respect to this undertaking or implementation of this MOA, the Corps shall consult with the objecting party, and other Consulting Parties at its discretion or at the request of any objecting party, to resolve the objection. If after initiating such consultation the Corps or any objecting party determines that the objection cannot be resolved through consultation and so advises the parties, the Corps shall forward all documentation relevant to the objection to ACHP, including the Corps' proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

- a. Advise the Corps that the ACHP concurs in the Corps' proposed response to the objection, whereupon the Corps will implement its proposed response;
- b. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response; or
- c. Notify the Corps that the objection will be referred for comment pursuant to 36 CFR § 800.7 (a)(4), and proceed to refer the objection and comment. The Corps shall take the resulting comment into account in accordance with 36 CFR § 800.7 (c)(4) and Section 110(i) of the National Historic Preservation Act.

2. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the Corps may proceed with its proposed response to the objection.

3. The Corps shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.

4. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA or the effect of the undertaking on historic properties be raised by a member of the public, if the Corps determines that the objection is not frivolous, the Corps shall notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the Consulting Parties to resolve the objection. The Corps shall make a final decision on such non-frivolous objections. Should the Corps determine that the objection is frivolous, it will so notify the objector in writing and proceed without any future consideration of such objection.

5. The Corps recognizes that the dispute resolution process may require a Tribe to submit information that is extremely culturally sensitive. The Corps and ACHP will attempt to protect Tribal information submitted to them in the dispute resolution process to the maximum extent permissible under the federal Freedom of Information Act, the National Historic Preservation Act, and other applicable statutes. If SHPO or the City obtain any Tribal information during the

dispute resolution process, they will attempt to protect such information to the maximum extent permissible under the Virginia Freedom of Information Act.

#### B. Annual Review

1. On or before July 15<sup>th</sup> of each year following the execution of this MOA until it expires or is terminated, the City shall provide the Corps, SHPO, the Tribes and other Consulting Parties a summary report detailing work undertaken pursuant to its terms. The City shall ensure that its annual report is made available for public inspection at City offices, at the Library of Virginia, and at public libraries in Newport News and King William and New Kent Counties; that potentially interested members of the public are made aware of its availability through posting on the City's website and by mailings to individuals and organizations who have requested such notifications; and that interested members of the public are invited to provide comments to the Corps, SHPO, Tribes, and ACHP as well as to the City. A comment period of thirty (30) days will be allowed.

2. The Corps, SHPO, and ACHP shall review the report and provide comments to the Corps and City. Other Consulting Parties may review and comment on the report at their discretion. All participating Consulting Parties will consider comments received from the public.

3. At the request of any Consulting Party, the Corps shall ensure that a meeting or meetings are held to facilitate review and comment, to resolve questions, or to resolve adverse comments.

4. Based on this review, the Corps, SHPO, and ACHP shall determine whether this MOA shall continue in force, be amended, or be terminated.

#### C. Amendments and Termination

1. Should any party to this MOA advise the Corps, in writing that it is unable to carry out a responsibility assigned to it by this MOA, or that it believes an amendment to this MOA is necessary to accommodate changed circumstances or unanticipated situations, the parties shall immediately consult to consider an amendment(s) to this MOA. Amendments shall be negotiated in the same manner as was the original MOA. An amendment will go into effect upon written agreement by the Corps, SHPO and ACHP.

2. If the Corps receives any information that the City may have failed to comply with any provision of this agreement, it will investigate to determine whether any breach has occurred. The Corps shall notify the Tribes and SHPO upon receipt of any such information. If the Corps determines, after preliminary investigation, that it is likely that the City has failed to comply with this agreement and that there is any risk that a historic property will be or has been adversely affected by the City's failure to so comply, the Corps shall consider modification, suspension or revocation of the Department of the Army permit under 33 CFR § 325.7.

3. The Corps, SHPO, and ACHP may, at their individual discretion, propose to terminate this MOA, whereupon the Corps will attempt to reach agreement on an amendment per Stipulation VI.C.1. If such an attempt fails within 30 days, any signatory may terminate this MOA upon written notice to the other signatories and consulting parties. The Corps will consider modification, suspension, or revocation of the Department of the Army permit pursuant to 33 CFR § 325.7. In the event of termination, the City will ensure that a final report is prepared on all work accomplished pursuant to this MOA, in a manner consistent with Stipulation IV above, and that all data and materials recovered during implementation of this MOA are cared for in a manner consistent with Stipulation V above.

4. Unless extended in writing by agreement of the Corps, SHPO, and ACHP, this MOA will be terminated if its terms are not carried out within ten (10) years from the date of its execution. Should implementation of this MOA be in progress but not completed within 10 years after its execution, the Corps, SHPO, ACHP, the City, and other Consulting Parties shall consult to extend the pertinent terms of this MOA until implementation is completed. Should agreement not be reached on extension or revision of this MOA, the parties will consult and execute a new MOA, or the Corps will seek and consider the comments of the ACHP in accordance with 36 CFR § 800.7.

#### D. Professional Qualifications

1. All archaeological work carried out pursuant to this MOA will be conducted by or under the direct supervision of an individual or individuals who meet, at a minimum, the qualifications for archaeology set forth in the *Secretary of Interior's Professional Qualifications Standards* (hereinafter "the Secretary's Standards).
2. All evaluations of buildings or structures will be carried out by or under the supervision of an individual or individuals who meet, at a minimum, the qualifications for architectural history set forth in the Secretary's Standards while all design work on historic buildings and structures will be carried out by or under the supervision of an individual or individuals meeting the qualifications for historic architecture set forth in the Secretary's Standards.
3. All work concerning rural historic landscapes (if any) will be carried out by or under the supervision of a qualified landscape historian, landscape architect, or other pertinent landscape expert, and in accordance with the applicable guidelines set forth in National Register of Historic Place Bulletin 30 (*Guidelines for Evaluating and Documenting Rural Historic Landscapes*) and *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service 1996).
4. All work concerning TCP's will be carried out by or under the supervision of an individual meeting the professional qualification standards appended to NRHP Bulletin 38 (*Guidelines for Evaluating and Documenting Traditional*

Cultural Properties), except where the City and a Tribe agree, or a Tribe advises, that such expertise is unnecessary or inappropriate.

5. The Corps will utilize the expertise of its own qualified historic preservation professionals involving decisions under this MOA. The Corps' qualified historic preservation professionals shall meet the Secretary of Interior's Professional Qualification Standards (62 FR 33707, June 20, 1997), be experienced in the implementation of Section 106 of the National Historic Preservation Act, and be experienced in the cultural resources of the mid-Atlantic region.
- E. Execution of this MOA, and implementation of its terms, evidences that the Corps has taken into account the effects of the undertaking on historic properties and afforded ACHP a reasonable opportunity to comment on the undertaking. The MOA will become effective on the date that the MOA has been signed by the Corps, SHPO, and ACHP. The Corps will ensure that each Consulting Party is provided a copy of the fully executed MOA.
- F. Nothing in this agreement shall be construed to restrict, replace, or preclude judicial review of actions taken under, or noncompliance with its terms provided, however, that available remedies under Stipulation VI.A shall have first been exhausted.
- G. This MOA may be executed in any number of counterparts, each of which when executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. All actions taken by the Corps in accordance with this MOA are subject to the availability of funds, and nothing in this MOA shall be interpreted as constituting a violation of the Anti-Deficiency Act.

U.S. ARMY CORPS OF ENGINEERS, NORTH ATLANTIC DIVISION

By: *William W. B. Temple* Date: 21 Jun 05

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: *[Signature]* Date: 6/28/05

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Sharon L. Corum* Date: 6/29/05  
*for John M. Fowler*

CITY OF NEWPORT NEWS, VIRGINIA

By: *Ed Maroney* Date: 6-27-05